

No. 7294

United States *re Vol. 1830*
Circuit Court of Appeals
For the Ninth Circuit. 18

UNITED STATES OF AMERICA,

Appellant,

vs.

WALTER WOODALL,

Appellee.

Transcript of Record.

Upon Appeal from the District Court of the United States for the
Southern District of California, Central Division.

FILED

MAY 25 1934

PAUL P. O'BRIEN,
CLERK

No.

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For the Ninth Circuit.

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Appellant,

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[Clerk's Note: When deemed likely to be of an important nature, errors or doubtful matters appearing in the original record are printed literally in italics; and likewise, cancelled matter appearing in the original record is printed and cancelled herein accordingly. When possible, an omission from the text is indicated by printing in italics the two words between which the omission seems to occur.]

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Names and Addresses of Attorneys.

For Appellant:

PEIRSON M. HALL, Esq.,

United States Attorney,

HUGH L. DICKSON, Esq.,

Assistant United States Attorney,

MADISON L. HILL, Esq.,

Attorney, Department of Justice,
Federal Building,

Los Angeles, California.

For Appellee:

VOLNEY P. MOONEY, JR., Esq.,

SYLVESTER HOFFMANN, Esq.,

Chester Williams Building,

Los Angeles, California.

United States of America, ss.

To WALTER WOODALL and VOLNEY P. MOONEY, JR., and SYLVESTER HOFFMANN, his Attorneys, GREETING:

You are hereby cited and admonished to be and appear at a United States Circuit of Appeals for the Ninth Circuit, to be held at the City of San Francisco, in the State of California, on the 6th day of Nov, A. D. 1933, pursuant to Order Allowing Appeal filed October 7th, 1933, in the Clerk's Office of the District Court of the United States, in and for the Southern District of California, in that certain action entitled Walter Woodall vs United States of America, No. 4247-M wherein the United States of America is defendant and appellant and you are plaintiff and appellee to show cause, if any there be, why the Judgment in the said cause mentioned, should not be corrected, and speedy justice should not be done to the parties in that behalf.

WITNESS, the Honorable PAUL J. McCORMICK United States District Judge for the Southern District of California, this 7th day of October, A. D. 1933, and of the Independence of the United States, the one hundred and fifty-eighth

Paul J McCormick

U. S. District Judge for the Southern District of California.

Receipt is acknowledged of a copy of the within Citation, together with a copy of the Petition for Appeal, Assignment of Errors and Order Allowing Appeal herein.

Dated: October 7 1933.

Volney P. Mooney Jr.

Attorneys for Plaintiff

[Endorsed]: In the United States Circuit Court of Appeals for the Ninth Circuit Walter Woodall, Plaintiff and Appellee, vs. United States of America, Defendant and Appellant. CITATION Filed Oct 9-1933 R. S. Zimmerman, Clerk By L Wayne Thomas Deputy Clerk

IN THE DISTRICT COURT OF THE UNITED
STATES OF AMERICA IN AND FOR THE
SOUTHERN DISTRICT OF CALIFORNIA
CENTRAL DIVISION

WALTER WOODALL,)

Plaintiff, (

-vs.-

COMPLAINT—
WAR RISK
INSURANCE

UNITED STATES OF AMERICA, (

Defendant.)

Comes now the plaintiff and for his cause of action against this defendant complains and alleges as follows:

I

That plaintiff is a citizen of the United States of America and a resident of the Southern District and State of California and of the County of Los Angeles therein.

II

That this action is brought under the War Risk Insurance Act of October 6, 1917, and the World War Veterans Act of June 7, 1924, and amendatory acts, and is based upon a policy of insurance issued under and by virtue of said acts to the plaintiff by the defendant.

III

That on the 31st day of December, 1917, plaintiff enlisted in the armed forces of defendant herein, and that he served in said armed forces from said date up to and including the 11th day of September, 1919, when he was honorably discharged from said service, and that during all of said time he was employed exclusively in the active service of defendant herein.

IV

That during the month of January, 1918, and while this plaintiff was in said active service and employment of and for defendant herein, plaintiff made application for and was granted insurance in the sum of Five Thousand Dollars (\$5,000.00), by defendant, who thereafter issued to plaintiff its certificate of his compliance of said acts. That plaintiff paid all premiums promptly when the same became due on said policy of insurance, and that plaintiff has in all ways and respects complied with the legal requirements and duties on his part to be performed. That plaintiff paid all premiums on said policy of insurance from the date of the issuance thereto of same, to-wit: the month of January, 1918, up to and including the month of December, 1919.

V

That while serving the defendant as aforesaid and prior to the date of the honorable discharge of plaintiff as aforesaid mentioned, plaintiff herein contracted certain dis-

eases, injuries and disabilities resulting in and known as pulmonary tuberculosis, gall bladder disabilities and other disabilities.

VI

That under the provisions of the said Act and other Acts amendatory thereof, hereinbefore described under and by virtue of the terms of the policy of insurance issued by defendant herein to plaintiff, plaintiff is entitled to the payment of the sum of \$28.75 for each and every month that he may be permanently and totally disabled.

VII

That said diseases, injuries and disabilities have continuously since the month of November, 1919, rendered and still do render plaintiff herein wholly unable to follow continuously any substantially gainful occupation and such diseases, injuries and disabilities are of such a nature and founded upon such conditions that it is reasonably certain they will continue throughout plaintiff's lifetime in the same or greater degree so as to prevent him from following continuously any substantially gainful occupation. That plaintiff has been ever since the month of November, 1919, and still is totally and permanently disabled by reason of and as a direct and proximate result of such disabilities above set forth.

VIII

That plaintiff has made application to the defendant, through its Veterans Bureau and the director thereof, for

the payment of said insurance for total and permanent disability, and that said Veterans Bureau and the director thereof has refused to pay plaintiff said insurance, and on October 3rd, 1930, disputed plaintiff's claim to said insurance and disagreed with him concerning his rights to same.

IX

That because of the foregoing, plaintiff is entitled to the payment of \$28.75 for each and every month since November, 1919, and continuously thereafter so long as he lives and continues to be permanently and totally disabled, this in accordance and pursuant to the terms of the aforesaid policy of insurance.

X

That plaintiff has employed the services of Volney P. Mooney, Jr., an attorney and counselor at law, duly licensed and admitted to practice before this Court and all of the Courts of the State of California; that reasonable attorney's fees to be allowed to plaintiff's attorney for his services in this action is Ten percentum (10%) of the amount of insurance recovered, and to be paid by the defendant out of the payments to be made under the judgment or decree payable at a rate not exceeding one-tenth (1/10) of each of such payments until paid in the manner provided by Section 500 of the World War Veterans Act of 1924 as amended.

WHEREFORE, plaintiff prays judgment as follows:

1. That plaintiff since November, 1919, has been and still is totally and permanently disabled and unable to follow continuously any substantially gainful occupation and that it is reasonably certain that this condition will exist throughout plaintiff's lifetime.

2. That plaintiff have judgment against the defendant for all of the monthly installments of \$28.75 per month, for each and every month from the aforesaid month of November, 1919, and continuously thereafter so long as he lives and remains totally and permanently disabled.

3. Determining and allowing to plaintiff's attorney a reasonable attorney's fees in the amount of Ten per centum (10%) of the amount of insurance recovered, and to be paid by the defendants out of the payments to be made under the judgment or decree at a rate not exceeding one-tenth (1/10) of each of said payments in the manner provided by Section 500 of the World War Veterans Act of 1924 as amended.

4. For such other and further relief as may be just and equitable in the premises.

Volney P. Mooney Jr.

VOLNEY P. MOONEY, Jr.

Attorney for Plaintiff.

STATE OF Tennessee)
) ss.
 COUNTY OF Washington)

WALTER WOODALL, being by me first duly sworn, deposes and says: That he is the Plaintiff in the above entitled action; that he has read the foregoing Complaint and knows the contents thereof; and that the same is true of his own knowledge, except as to the matters which are therein stated upon his information or belief, and as to those matters that he believes it to be true.

Walter Woodall

Subscribed and sworn to before me this 22nd day of October, 1930.

[Seal]

L J Kirkpatrick

Notary Public in and for the County of Washington, State of Tennessee

My Commission expires Jan 15, 1933

[Endorsed] No. 4247-M United States District Court Southern District of California Central Division Walter Woodall Plaintiff vs. United States of America, Defendant COMPLAINT—WAR RISK INSURANCE Filed Nov 5 1930 R. S. Zimmerman, Clerk By Edmund L Smith Deputy Clerk Volney P. Mooney, Jr. Atty. at law 818 Chester Williams Bldg. Los Angeles—MUTual 8208

IN THE DISTRICT COURT OF THE UNITED
STATES, IN AND FOR THE SOUTHERN
DISTRICT OF CALIFORNIA,
CENTRAL DIVISION.

WALTER WOODALL,)	
)	
Plaintiff,)	
	)	No. 4247-M
vs.)	
	)	ANSWER
UNITED STATES OF AMERICA,)	
)	
Defendant.)	

COMES NOW the defendant, United States of America, by its attorneys, Samuel W. McNabb, United States Attorney for the Southern District of California, Dorothy Lenroot Bromberg, Assistant United States Attorney for said district, and H. C. Veit, Regional Attorney for the Veterans Bureau, of counsel, and for answer to the complaint on file herein, admits, denies and alleges as follows, to-wit:

I.

Answering Paragraphs I and X of the plaintiff's complaint, this defendant has no information or belief sufficient to enable it to answer the allegations of said Paragraphs I and X of the plaintiff's complaint herein and on that ground denies each and every allegation therein set forth.

II.

The defendant admits the allegations of Paragraphs II, III, IV and VIII of plaintiff's complaint.

III.

This defendant denies the allegations of Paragraphs V, VI, VII and IX of the plaintiff's complaint.

WHEREFORE, defendant prays that the complaint be dismissed, and that there be judgment for the defendant for its costs of suit incurred herein, and for such other and further relief as may seem meet and proper to the Court in the premises.

DATED this 25th day of February, 1931.

Samuel W. McNabb
SAMUEL W. McNABB,
UNITED STATES ATTORNEY.

Dorothy Lenroot Bromberg
DOROTHY LENROOT BROMBERG,
Assistant U. S. Attorney.

H. C. Veit -
H. C. VEIT,
Regional Attorney for the Veterans
Bureau, Of Counsel,

Attorneys for Defendant.

[Endorsed]: No. 4247-M In the District Court of the United States for the Southern District of California, Central Division. Walter Woodall, Plaintiff, vs. United States of America, Defendant. ANSWER Received copy of within Answer this 25 day of Feb, 1931 Volney P. Mooney, Jr. Attorney for Plaintiff Filed Feb 25 1931 R. S. Zimmerman, Clerk By M L Gaines Deputy Clerk

IN THE DISTRICT COURT OF THE UNITED STATES IN AND FOR THE SOUTHERN DISTRICT OF CALIFORNIA CENTRAL DIVISION

WALTER WOODALL,)
)
Plaintiff,)
)
vs.) No. 4247-M
)
UNITED STATES OF AMERICA,)
)
Defendant.)

STIPULATION WAIVING JURY

IT IS HEREBY STIPULATED AND AGREED by and between the parties hereto, through their respective counsel, that trial by jury in this case is expressly waived and that the trial may be by the Court without a jury.

Dated: March 14 1933.

John R. Layng
JOHN R. LAYNG
United States Attorney

Lewis M. Andrews
LEWIS M. ANDREWS
Asst. United States Attorney

Attorneys for Defendant.

Volney P Mooney, Jr
VOLNEY P. MOONEY, JR.,
Sylvester Hoffmann
SYLVESTER HOFFMAN,
Attorneys for Plaintiff.

[Endorsed]: No. 4247-M District Court of the
United States Southern District of California Central
Division Walter Woodall, Plaintiff, vs. United States of
America, Defendant. STIPULATION WAIVING
JURY Filed Mar 16 1933 R. S. Zimmerman, Clerk By
Thomas Madden Deputy Clerk

At a stated term, to wit: The February Term, A. D. 1933, of the District Court of the United States of America, within and for the Central Division of the Southern District of California, held at the Court Room thereof, in the City of Los Angeles on Wednesday the 31st day of May in the year of our Lord one thousand nine hundred and thirty-three.

Present:

The Honorable PAUL J. McCORMICK, District Judge.

Walter Woodall,)	
Plaintiff,)	
vs	)	No. 4247-M-Cr.
United States of America,)	
Defendant.)	

This cause coming on for trial; Sylvester Hoffman, Esq., appearing for the plaintiff; Clyde Thomas, Esq., Assistant United States Attorney, appearing for the Government; R. F. Purdue being present as official court reporter;

Both sides answering ready at the hour of 10:05 a. m., it is ordered that trial proceed; whereupon, Attorney Hoffman makes statement of the plaintiff's case, and

Ray E. DeSpain is called, sworn and testifies on direct examination by Attorney Hoffman, and on cross-examination by Attorney Thomas.

John F. Newsbaum is called, sworn and testifies on direct examination by Attorney Hoffman, and on cross-examination by Attorney Thomas.

Walter Woodall is called, sworn and testifies on direct examination by Attorney Hoffman, and on cross-examination by Attorney Thomas.

At the hour of 12 noon, recess is declared; and court reconvening at 2 p. m., all present as before, it is ordered that trial proceed; whereupon,

Marvel Beem is called, sworn and testifies on direct examination by Attorney Hoffman, and on cross-examination by Attorney Thomas.

Harry Cohn is called, sworn and testifies on direct examination by Attorney Hoffman, and on cross-examination by Attorney Thomas.

Walter Woodall resumes the stand and testifies further on cross-examination by Attorney Thomas; and thereupon certain depositions are offered and stipulated to have been deemed read in evidence; and the following exhibit is offered and admitted in evidence, to-wit:

Plaintiff's Ex. 1: Copy of Service Record (Transcript)

Harrison M. Hawkins is called, sworn and testifies for the plaintiff on direct examination by Attorney Hoffman and on cross-examination by Attorney Thomas, and in connection with this testimony the following exhibits are offered and admitted in evidence, to-wit:

Plaintiff's	Ex. 2:	Copy of Medical Record.		
"	Ex. 3:	Copy of Service Record.		
"	Ex. 4:	Transcript of Work Record.		
"	Ex. 5:	Report of Physical Examination dated 8/30/20.		
"	Ex. 6:	Letter, dated 8/30/20.		
"	Ex. 7:	Report of Physical Examination dated 1/20/21.		
"	Ex. 8:	" " " " " "	"	7/11/21.
"	Ex. 9:	" " " " " "	"	7/18/21.
"	Ex. 10:	" " " " " "	"	11/17/21.
"	Ex. 11:	" " " " " "	"	3/14/22.
"	Ex. 12:	" " " " " "	"	4/15/22.
"	Ex. 13:	" " " " " "	"	10/30/22.
"	Ex. 14:	" " " " " "	"	4/10/23.
"	Ex. 15:	" " " " " "	"	4/10/23.
"	Ex. 16:	" " " " " "	"	8/30/23.
"	Ex. 17:	" " " " " "	"	9/21/23.
"	Ex. 18:	" " " " " "	"	1/6/28.
"	Ex. 19:	" " " " " "	"	2/14/28.
"	Ex. 20:	" " " " " "	"	1/10/29.
"	Ex. 21:	" " " " " "	"	7/8/27.
"	Ex. 22:	" " " " " "	"	"

At 4 o'clock p. m. the plaintiff rests; whereupon, Attorney Thomas moves for non-suit, which is denied without prejudice.

Elliott P. Smart is called, sworn and testifies on direct examination by Attorney Thomas and on cross-examination by Attorney Hoffman.

Oscar S. Essenson is called, sworn and testifies on direct examination by Attorney Thomas and on cross-examination by Attorney Hoffman.

Frank L. Long is called, sworn and testifies on direct examination by Attorney Thomas and on cross-examination by Attorney Hoffman.

Frederick F. DuPree is called, sworn and testifies on direct examination by Attorney Thomas; and in connection therewith the following exhibit is offered and admitted in evidence, to-wit:

Defendant's Ex. A: Application dated 8/30/20.

At 4:40 o'clock p. m., the defendant and plaintiff resting;

It is ordered that this cause stand submitted for decision on briefs to be filed; plaintiff's brief to be filed by June 6, 1933, and U. S. brief five days thereafter; it is further ordered that original exhibits may be withdrawn and photostatic copies substituted therefor.

At a stated term, to wit: The February Term, A. D. 1933, of the District Court of the United States of America, within and for the Central Division of the Southern District of California, held at the Court Room thereof, in the City of Los Angeles, California, on Friday, the 30th day of June, in the year of our Lord one thousand nine hundred and thirty-three.

Present:

The Honorable PAUL J. McCORMICK, District Judge.

Walter Woodall,)	
Plaintiff,)	
vs.	)	No. 4247-M-Law
United States of America,)	
Defendant.)	

Findings and judgment are ordered for the plaintiff and against the defendant pursuant to the prayer of plaintiffs COMPLAINT and in accordance with written Memorandum of Conclusions of the Court filed herein this day.

Messrs. Volney P. Mooney, Jr., and Sylvester Hoffman are allowed ten per cent of the amount of recovery by plaintiff as attorneys' fees herein. Exceptions noted and allowed to defendant.

IN THE DISTRICT COURT OF THE UNITED
STATES IN AND FOR THE SOUTHERN
DISTRICT OF CALIFORNIA
CENTRAL DIVISION

WALTER WOODALL,)	
)	
Plaintiff,)	
)	
vs.	)	No. 4247-M
)	
UNITED STATES OF AMERICA,)	
)	
Defendant.)	

MEMORANDUM OF CONCLUSIONS OF THE
COURT.

McCORMICK, District Judge:

Action on War Risk Insurance Certificate in force by payment of premiums until October 11, 1919. It is admitted that the plaintiff has been totally and permanently disabled since March 9, 1928. The record evidence from the Government file of this veteran clearly shows that he had active pulmonary tuberculosis of chronic stage as early as November 17, 1921, and in the light of the evidence as to his other disabilities and exposure encountered while in service, it is a fair inference to deduce that he was afflicted with active tuberculosis during the life of the policy to such an extent as to reasonably make it unsafe and dangerous for him to thereafter perform

any gainful work. It is clear that the disease and disability were brought about by the unsanitary condition and exposure that plaintiff underwent in Naval service of the United States in the North Seas during the World War period. The record shows that he tried to work but could do so only spasmodically and for brief periods. He has been entirely unable to do any work for the last six or seven years because of his tubercular condition that has been aggravated by other physical disabilities.

Under these circumstances, he is entitled to a finding that he has been totally and permanently disabled within the terms of the Insurance Certificate and applicable statutes and decisions of the Federal Courts from as early as August, 1919. The case of *Falbo vs. United States*, C. C. A. 9, decided May 1, 1933, is not analogous. There the veteran was employed for more than two years at regular wages and was able to do the usual work of loading lumber and working in a match factory and sawmill. I think Judge Sawtelle's observations in his dissenting opinion are more nearly applicable to the facts in this case than is the majority opinion in the *Falbo* case. See also *United States vs. Francis*, C. C. A. 9, 64 Fed. 2nd., 865; *United States vs. Berleson*, C. C. A. 9, 64 Fed. 2nd., 867.

Findings and judgment accordingly for plaintiff with ten per cent allowance to Messrs. Mooney and Hoffman as attorneys' fees.

Dated at Los Angeles, California

June 30, 1933

[Endorsed]: Filed Jun 30 1933 R. S. Zimmerman,
Clerk By B B Hansen Deputy Clerk

IN THE DISTRICT COURT OF THE UNITED
STATES IN AND FOR THE SOUTHERN
DISTRICT OF CALIFORNIA
CENTRAL DIVISION

WALTER WOODALL,)	
)	
Plaintiff,	)	No. 4247-M
)	
vs.	)	FINDINGS OF
	)	FACT
UNITED STATES OF AMERICA,	)	and
	)	CONCLUSIONS
Defendant.	)	OF LAW

This matter came on regularly for trial on the 31st day of May, 1933, before the undersigned, one of the Judges of the above-entitled Court, trial by jury having been waived in writing by both the parties, the plaintiff appearing personally and by Volney P. Mooney, Jr., Esq., his attorney, and Sylvester Hoffmann, Esq., of Counsel, and the defendant appearing by Peirson M. Hall, Esq., United States Attorney for the Southern District of California, and by Clyde Thomas, Esq., Assistant United States Attorney for the aforesaid district; and evidence, both oral and documentary, having been introduced, and the cause having heretofore been submitted to the Court for its decision, the Court being fully informed in the premises and having considered the law and the evidence, the Court now makes its findings of fact as follows:

FINDINGS OF FACT

1. That it is true that the plaintiff, Walter Woodall, is a citizen of the United States of America, and at the time of the commencement of this action was, and now is a resident of the Southern District and the State of California and of the County of Los Angeles therein.

2. That it is true that this action is brought under the War Risk Insurance Act of October 6, 1917, and the World War Veterans Act of June 7, 1924, and amendatory acts, and is based upon a policy of insurance issued under and by virtue of said acts to the plaintiff by the defendant.

3. That it is true that the plaintiff, Walter Woodall, enlisted in the armed forces of the defendant herein, to-wit: the United States of America, on the 31st day of December, 1917, and that he served in said armed forces from said date up to and including the 11th day of September, 1919, when he was honorably discharged from said service, and that during all of said time he was employed exclusively in the active service of defendant herein.

4. That it is true that during the month of January, 1918, and while this plaintiff was in said active service and employment of and for defendant herein, plaintiff made application for and was granted insurance in the sum of Five Thousand Dollars (\$5,000.00), by defendant, who thereafter issued to plaintiff its certificate of his compliance of said acts. That plaintiff paid all premiums promptly when the same became due on said policy of insurance, and that plaintiff has in all ways and respects complied with the legal requirements and duties

on his part to be performed. That plaintiff paid all premiums on said policy of insurance from the date of the issuance thereto of same, to-wit: the month of January, 1918, up to and including the month of December, 1919.

5. That it is true that while serving the defendant as aforesaid and prior to the date of the honorable discharge of plaintiff as aforesaid mentioned, plaintiff herein contracted certain diseases, injuries and disabilities resulting in and known as pulmonary tuberculosis, gall bladder disabilities and other disabilities.

6. That it is true that under the provisions of the said Act and other Acts amendatory thereof, hereinbefore described and under and by virtue of the terms of the policy of insurance issued by defendant herein to plaintiff, plaintiff is entitled to the payment of the sum of \$28.75 for each and every month that he may be permanently and totally disabled.

7. That it is true that said diseases, injuries and disabilities, have continuously since the month of November, 1919, rendered and still do render plaintiff, Walter Woodall, wholly unable to follow continuously any substantially gainful occupation; that such diseases, injuries and disabilities are of such a nature and founded upon such conditions that it is reasonably certain they will continue throughout plaintiff's lifetime in the same or greater degree so as to prevent him from following continuously any substantially gainful occupation. That plaintiff has been ever since the month of November, 1919, and still is totally and permanently disabled by reason of and as a direct and proximate result of such disabilities above set forth.

8. That the above-named plaintiff filed suit against the United States of America in the aforesaid District Court of the United States to recover the benefits under his aforesaid war risk term insurance contract.

9. That it is true that the plaintiff made application to the defendant, prior to the commencement of this action, through its Veterans Bureau and the director thereof, for the payment of said insurance for total and permanent disability, and that said Veterans Bureau and the director thereof has refused to pay plaintiff said insurance, and on October 3rd, 1930, disputed plaintiff's claim to said insurance and disagreed with him concerning his rights to the same.

10. That it is true that the plaintiff herein is represented by Volney P. Mooney, Jr., Esq., and the defendant. United States of America, is represented by Peirson M. Hall, Esq., United States Attorney in and for the Southern District of California.

11. That it is true that the aforesaid policy of war risk term insurance was in full force and effect during the month of November, 1919, the date upon which the plaintiff was and became and ever since has been permanently and totally disabled for insurance purposes.

12. That it is true that plaintiff has employed the services of Volney P. Mooney, Jr., Esq., attorney and counsellor at law, duly licensed and admitted to practice before this Court and all of the Courts of the State of

California; that reasonable attorney's fees to be allowed to plaintiff's attorney for his services in this action is Ten per centum (10%) of the amount of insurance recovered, and to be paid by the defendant out of the payments to be made under the judgment or decree payable at a rate not exceeding one-tenth (1/10) of each of such payments until paid in the manner provided by Section 500 of the World War Veterans Act of 1924 as amended.

CONCLUSIONS OF LAW

From the above findings of fact the Court makes the following Conclusions of Law:

1. That the insured, to-wit: the plaintiff, Walter Woodall, became permanently and totally disabled during the month of November, 1919, and while said \$5,000.00 policy of war risk term insurance was in full force and effect, and that at all times from and after said month of November, 1919, the plaintiff was, ever since has been and now is totally and permanently disabled.

2. That the plaintiff herein is entitled to recovery from the defendant, United States of America, in accordance with the said war risk term insurance contract and the laws applicable thereto, monthly installments in the sum of \$28.75 each for each and every month commencing with the month of November, 1919, and continuously thereafter as long as he lives and continues to be permanently and totally disabled.

3. That Volney P. Mooney, Jr. Esq., attorney for plaintiff herein, be allowed for his services in this action ten per centum (10%) of the amount of insurance recovered as aforesaid, and to be paid by the defendant, United States, out of the payments to be made under the judgment or decree herein, at a rate of one-tenth of each of such payments until paid in the manner provided by Section 500 of the World War Veterans Act of 1924 as amended.

Dated: July 7th, 1933.

Paul J McCormick
U. S. District Judge

Approved as to form as provided by Rule 44.

PEIRSON M. HALL,
U. S. Attorney

M G Gallaher
Assistant U. S. Attorney

[Endorsed]: No. 4247-M In the United States District Court in and for the Southern District of California Central Division Walter Woodall Plaintiff, vs. United States of America Defendant. FINDINGS OF FACT AND CONCLUSIONS OF LAW. Filed Jul 7-1933 R. S. Zimmerman, Clerk By B B Hansen Deputy Clerk. Volney P. Mooney, Jr. Attorney at Law 818 Chester Williams Building 215 West Fifth Street Los Angeles Phone MUtual 8208 Attorney for Plaintiff.

IN THE DISTRICT COURT OF THE UNITED
STATES IN AND FOR THE SOUTHERN
DISTRICT OF CALIFORNIA
CENTRAL DIVISION

— — — — —

WALTER WOODALL,)	
)	
Plaintiff,)	
	)	No. 4247-M
vs.)	
	)	JUDGMENT
UNITED STATES OF AMERICA,)	
)	
Defendant.)	

The above-entitled cause having come on regularly for trial the 31st day of May, 1933, before the undersigned, one of the Judges of the above-entitled Court, sitting without a jury, trial by jury having been waived in writing by both plaintiff and defendant; plaintiff appearing in person and by his attorney, Volney P. Mooney, Jr. and Sylvester Hoffmann of Counsel for plaintiff, and the defendant, United States of America, appearing by Peirson M. Hall, United States Attorney, and Clyde Thomas, Assistant U. S. Attorney, for the above district, and the evidence, both oral and documentary, having been introduced, and the case submitted to the Court for decision, and the Court heretofore having made and caused to be filed here-

in its written Findings of Fact and Conclusions of Law, and being fully advised in the premises,

NOW, THEREFORE, IT IS ORDERED, ADJUDGED AND DECREED that the plaintiff, Walter Woodall, recover from the defendant, the United States of America, benefits in accordance with the terms of his war risk term insurance contract, at the rate of \$28.75 per month from and after the month of November, 1919, and continuously thereafter at such rate so long as the plaintiff may live and remain and continue to be totally and permanently disabled.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that Volney P. Mooney, Jr. is entitled to receive from said judgment and payments, as a reasonable attorney's fee for his services as attorney for the plaintiff in the above-entitled case, ten percentum (10%) of the amount of any and all monies due to the plaintiff in accordance herewith, and that he is entitled to the further sum of ten percentum (10%) of each and every payment other than the sum found to be due hereunder, hereinafter made by the defendant to the plaintiff, his heirs, executors, administrators, assigns, or any other person, in consequence of or as the result of the entry of this judgment, said payments, however, to be made as by law in such cases provided.

Done this 7th day of July, 1933.

Paul J McCormick
United States District Judge.

Approved as to form as provided in Rule 44

PEIRSON M. HALL,
United States Attorney,
M G Gallaher
Assistant U. S. Attorney

Judgment entered and recorded JUL 7-1933.

R. S. ZIMMERMAN
Clerk.

By B B Hansen
Deputy Clerk.

[Endorsed]: No. 4247-M In the United States District Court in and for the Southern District of California Central Division Walter Woodall Plaintiff vs. United States of America Defendant JUDGMENT Filed Jul 7-1933 R. S. Zimmerman, Clerk By B B Hansen Deputy Clerk Volney P. Mooney, Jr. Attorney at Law 818 Chester Williams Building 215 West Fifth Street Los Angeles Phone MUtual 8208 Attorney for Plaintiff.

IN THE DISTRICT COURT OF THE UNITED
STATES IN AND FOR THE SOUTHERN
DISTRICT OF CALIFORNIA
CENTRAL DIVISION

WALTER WOODALL,)	
)	
Plaintiff,)	
)	
vs.	)	No. 4247-M
)	
UNITED STATES OF AMERICA,)	
)	
Defendant.)	

BILL OF EXCEPTIONS

Be it remembered that the above entitled cause came on for trial in the United States District Court for the Southern District of California at Los Angeles on May 31, 1933 before the Honorable Paul J. McCormick, United States District Judge, without a jury, at which time the plaintiff was represented by Messrs. Mooney & Hoffman of Los Angeles, California, and the defendant, the United States of America, by Clyde Thomas, Esq., Assistant United States Attorney in and for the Southern District of California.

At the onset of the trial the following facts were established:

That Walter Woodall enlisted in the service of the United States on December 31, 1917 and he was discharged therefrom on September 11, 1919; that he applied for and was granted a contract of war risk term insur-

(Testimony of Ray Earl DeSpain)

ance during the month of January, 1918 in the sum of \$5,000; that premiums were paid thereon up to and including the month of December, 1919 which, with the grace period of thirty-one days, finally lapsed the contract at midnight January 31, 1920. It was also admitted on behalf of the government that the said Walter Woodall was and has been at all times since March 20, 1928 totally and permanently disabled. It was the contention of the plaintiff that he became totally and permanently disabled some time prior to midnight January 31, 1920. Thereafter the following proceedings took place:

RAY EARL DESPAIN,

a witness called on behalf of the plaintiff, testified substantially as follows:

That he identified the plaintiff, Walter Woodall, sitting at the counsel table, and that he had known the said Walter Woodall since 1922 or thereabouts; that he met Woodall while he was in vocational training with the John R. Paul Undertaking Company of Los Angeles, California, at which place the witness then occupied the position as head man and embalmer. Witness stated that Mr. Woodall was with the Company possibly six or eight weeks; that he was there part of the time and was sick part of the time; that he did not appear to be a well man and that at the suggestion of the witness Woodall was discharged because he could not "stand the work, the fumes made him cough and sick. He couldn't seem to do the work."

(Testimony of Ray Earl DeSpain)

CROSS EXAMINATION

On cross examination the witness stated that he was not sure whether it was in December 1922 or in January of 1923 as he could not remember and had no records; stated that Woodall seemed to be sick and coughing and stated he was a sick man; that he appeared to be trying to work; did not particularly complain of pain but was nauseated; did not complain of any particular disease. Witness expressed an opinion that he thought Woodall had lung or stomach trouble; that his appearance at the time of trial suggested that he was somewhat thinner than at the time he was in vocational training; that while in training he was pale, had a sort of yellowish color, was coughing and gagged easily; said that the plaintiff never complained to him of any lung trouble or tuberculosis; that he believed he asked the plaintiff if he had tuberculosis; did not remember whether the doctor had ever treated the plaintiff, or that he had asked the plaintiff if a doctor had treated him. Witness further answered that he did not tell the vocational training man that Woodall should be withdrawn from training but he did tell Woodall that he thought he should go to a doctor; did not remember what Woodall said or did, nor did he remember what, if any, pay he received while with the company.

(Testimony of John F. Newsbaum)

JOHN F. NEWSBAUM,

a witness called on behalf of the plaintiff, testified substantially as follows:

That from April, 1918 to sometime in August, 1919 he was a chief yeoman in the United States Navy on board the U.S.S. ROANOKE, his duty being in charge of the payrolls; that the ROANOKE was a converted freight steamer used in laying mines; that the ship was in that service from May, 1918 until the fall at the time of the Armistice; that they were laying mines in the North Sea; that the sleeping quarters on the ROANOKE for the officers were on the top deck and on the next deck below the crew had their sleeping quarters, these being on the second and third decks; that the ventilation of these decks was obtained through ventilators coming through the top side; that he had observed the ventilating of these quarters and that it was very poor; that members of the black gang, men who worked in the boiler room, slept on the second and third decks, and that when the mines came aboard they were stored on all decks below the first deck; that when the mines were not aboard there was ample room for the crew but when the mines were aboard the crew had to sleep where they could find room, and that, due to the crowded condition, the crew had to sling their hammocks over the mines or any vacant space; testified that the vessel used soft coal which was loaded on the boat by means of canvas sacks which were then emptied

(Testimony of John F. Newsbaum)

down chutes by way of the bunkers; that there was only one instance when the mine layers laid a smoke screen; said that the black gang worked in shifts; that when the mines were laid all the men had duties to perform, that is, after they were off their regular shifts; that he remembered Walter Woodall as a member of this crew; that Woodall was a fireman; that he was not closely or personally acquainted with him at that time other than seeing him; that he saw men coming up out of the fire room; that they generally wore dungarees, were stripped to the waist and they were covered with perspiration; they were not any different from a stoker that would come out of a hole in a Transpacific ship; that the witness ate at a separate mess from the rest of the crew but had the same food; testified further that when the ship would return from a mine-laying operation to Scotland they started coaling and taking on mines for the next trip; sometimes we would leave right away; the longest period that we layed in port was about 30 days between trips, which was unusual; that the ROANOKE averaged almost two trips a month; that when they came in it would take a day and night possibly to coal; testified that the mines with the anchor and chain would weigh about 1,400 lbs. apiece; testified that the stokers and firemen assisted at coaling and loading the ship. The boats crew consisted of 400 enlisted men and 20 to 25 officers.

CROSS EXAMINATION

On cross examination the witness stated that it would take about thirty-six hours from port to the mine fields where they unloaded and placed the mines, and that a

(Testimony of John F. Newsbaum)

round trip would take about three or four days; that they averaged about two trips a month making about twelve trips in all; stated that ventilation to the quarters came down the hatches and ventilators; that in port it was possible to open the port-holes in the daytime; that there was also a forced draft ventilation system blowing air into a part of the quarters. At night time the lights were not on while out at sea and they were not able to open the port-holes and all the ventilation came down from the hatches and ventilators; that when they would be in port the men not on shift generally went ashore from about 4 in the afternoon until 10 at night; stated the ROANOKE was about 300 feet long and 25 feet beam; that each man in the crew slept in a hammock; that it was somewhat crowded when the mines were aboard but there was plenty of room when they were not there, and the only time there was a tendency to crowd was when the mines were on the ship and that crowded condition would exist for the thirty-six hours they were going out, and when we had mines aboard; there was very little time we didn't have mines aboard.

RE-DIRECT EXAMINATION

He stated that after the Armistice the ship went to England for about two weeks, returned to Norfolk to have the mines unloaded then went to New Hampshire to be fitted up as a transport to bring the troops back from Europe; left Boston early in March to bring back troops and made four trips; that the speed of the vessel was 10 to 11 knots depending upon weather conditions. Witness also states that Captain V. D. Dunlap was Squadron Commander of the mine-laying squadron.

(Testimony of Walter Woodall)

RE-CROSS EXAMINATION

Witness stated that at times the ROANOKE was a troop ship they carried approximately 1,500 troops and a crew of 200.

WALTER WOODALL,

the plaintiff in the case, took the stand and testified substantially as follows:

That when he enlisted in the United States Navy on December 31, 1917 he was 33 years old and at the trial his age was 47; that before he entered the service he following stationary fireman firing boilers and followed mining, public works usually, at prevailing wages; that he made \$6.00 or \$7.00 per day mining; that he entered the service as a coal passer; that he had lost no time from illness or sickness prior to the war; that he was on the ROANOKE in the North Sea laying mines; that he passed the coal from the bunkers to the firemen, but helped the firemen occasionally to clean up the ashes and sift them out; that later he was promoted to second class fireman that conditions in the fireroom were very comfortable while in port but extremely hot when at sea; that they had a ventilator in the fireroom and the ventilation came down from the first deck but there was no ventilation in the bunkers where the air was dense; that they used soft coal and the handling of the coal made air conditions disagreeable; that when coaling the ship they would pour the coal in from the top deck and they would work in 20 minute shifts; that when firing the boilers at sea they would work four hours continually and 8 hours off; that if they were firing when laying mines they would keep on

(Testimony of Walter Woodall)

firing until they finished; that he at one time worked 14 hours on one shift firing a boiler; that it was extremely hot; working on the fires you can only get air through one ventilator; and that he was stripped to the waist and would stand under the ventilator to cool off; that the air coming down the ventilator was very cold; that he once fell out with over-heat and they poured water over him; they then put him in charge of the evaporators, the apparatus used to make fresh water out of salt water; that he got colds and had stomach trouble with pains; would get tired and cough; stated that he appeared on sick call at the sick bay; witness testified that he slept on the 3rd deck; that the ventilation was poor, especially at sea the port-holes being closed; that the air came down through a ventilating system, forced; that hammocks were about three feet apart; that he could hang his hammock up every night even when the mines were aboard.

The witness stated he was discharged on September 11, 1919; that he still had a tired feeling and cough; that the colds stayed with him all the time; had pains in his stomach; that his right side was sore; that he would be constipated and had diarrhoea and sour belches; that when he had charge of the evaporators he had to keep the steam gauge properly regulated; had to clean out the evaporators about every other shift and chip out the salt from around the coils; that this work was very much easier than coal passing; that when he was discharged he had his clothes on as well as he could remember; that he wanted to be discharged awfully bad; that as he walked by the doctors asked if he felt alright and he stated that he did; states that he was discharged in New York, went

(Testimony of Walter Woodall)

home to Alabama, and went to see Dr. Evans; that Dr. Evans gave him medicine and treatments for quite a while; still had at that time pains in his stomach, soreness on right side and tired feeling, and pains in the chest and coughing.

Witness testified that after he saw Dr. Evans he went to work in the oil fields in Louisiana firing a stationary boiler with oil, which was different from firing with coal; that all he had to do was regulate the oil and water; that he made \$4.00 to \$4.50 per day; that he worked about six weeks, eight hours a day; did not remember how many days a week but that if he felt bad he would lay off and someone else would work a double shift for him; stated he got sick and went back to see Dr. Hodges; had a bad stomach and pain in his right side; was tired and was coughing, with pains in his chest. In the spring of 1920 he saw Dr. Hodges quite often and got medicine, and then he was operated on for gall bladder, after which Dr. Hodges dressed his side several times; that the operation took place June 24, 1920, at Chattanooga, Tennessee, Dr. George R. West being the operator; that after the operation he went back home and Dr. Hodges treated him for some time, and that he then went to Birmingham, Alabama, and applied for vocational training and compensation; that he was refused vocational training; that some time in September he hired out for the Southern Railroad at Sheffield, Alabama as a yard brakeman switching, coupling and uncoupling cars and pass signals; that he received \$6.00 and something per day; that he worked about half the time; there was plenty of work to be done but he wasn't able to do the work; he was tired and his

(Testimony of Walter Woodall)

stomach hurt and he had pains in the right side and chest; that he would rest a good deal, and some of the boys would do some of the work for him, and at other times he wouldn't have anything to do, when there were no trains to be made up or distributed. He left some time in December of 1920 or the first of January, 1921 as he wasn't able to do the work. He was tired all the times, had pains in my chest and stomach and sour belches. He went down to New Orleans asked to go into vocational training and was refused. He then went to Taft, California, where he was treated by Dr. Hawkins; stated that he went West because Dr. Hodges told him his health would probably be better; that while at Taft his stomach bothered him a great deal; he was tired all the time; had pains in the chest and had diarrhoea; that this was in the spring and summer of 1921; that he went to Los Angeles and finding himself out of money went to the Red Cross and they sent him to the Public Health Service, which organization sent him to the Hospital at Sawtelle where he was told he had TB and was sent to the TB Hospital; stated that he was lighter than when he went into the service, probably five to ten pounds lighter; that he did not look for any employment there, at Taft; he wasn't able to work; that he was in the tuberculosis hospital in Los Angeles in 1921 until some time the next year; tried to go in training and that was told that he wasn't able, took it easy and later on they told him he was feasible for training and he went to school studying reading, writing and arithmetic; that prior to service he had had probably a fifth grade education in a country school; that he went to the John R. Paul Undertaking

(Testimony of Walter Woodall)

Parols for training in undertaking and embalming working under Mr. DeSpain; that he still had pains in the stomach and right side and was coughing; that he was too sick and was discharged and they said he was not able to take care of the work; that while he was there he was there continuously, that there were from one to three bodies to be embalmed each week; the formaldehyde made him sick; and caused him to vomit; that he left there and went back to Alabama because his mother was sick; some time in 1923 he worked a month for the Southern Railroad Company, about a third of that time, and then went over to Memphis and worked for the Illinois Central Railroad. He could not work all the time as he was tired and had pains in the stomach and would "give out"; that his friends in the Illinois Central helped him a great deal and that they would let him sit down and rest and did a great deal of the work for him; that his appetite was poor; that he was with the Illinois Central three or four months, he did not remember exactly how long; he left there for the same reason he left the other job; that he was too tired and not able to work; that from there he went to a government hospital for an operation; that after three weeks he was taking up specialty salesmanship selling tailor made shirts, working on commission, probably making \$30 or \$40 a month; that he kept no record; that he would work two or three hours, rest a while and then would go back to work some more, probably five or six hours a day; believed he gave that up after two or three months, some time during the latter part of 1924 or the first part of 1925, and that then he went down to Honduras in Central America; that he heard it was a good

(Testimony of Walter Woodall)

climate at Honduras for tuberculosis and living was cheap; that his mother financed the trip down there, sent him money each month, and that he was there for about two years; treated by native doctors and an *american* doctor; that while he was there he worked for a part of the time for the United Fruit Company as a conductor, first about two months then about three months, more, a year later, making one or two trips a week as conductor of a banana train; that business was very dull and there wasn't much work to do; he would take orders from the telephone booth from the dispatcher and take copy of the orders to the engineer, give the brakeman instructions and then return to the caboose and lay down and rest; that there was plenty of work that might have been done by him full time but because of his condition he didn't work more than two days a week; that he was tired and had a bad stomach; that while in Honduras, except when he was working as a freight conductor, he didn't do anything; he sat around and rested and took life easy and tried to get well; that the doctors in Honduras told him to go to a hospital; that he left Honduras and went to New Orleans and wanted to get in the Hospital there but that they stated they did not have any beds so he came back to California and entered the hospital at Sawtelle, which was about 1927, where he remained until 1928 when he contacted Dr. Beem during January or February as he was having diarrhoea, pains in his stomach, sour belches, pains in his side and a tired feeling; that when he left Sawtelle

(Testimony of Walter Woodall)

he came to the Veterans Bureau and they sent him to the Naval Hospital at San Diego in 1928; that about a month or two later he was discharged from that Hospital when he went back to his home in Alabama. In 1929 he was hospitalized at Oteen, North Carolina.

CROSS EXAMINATION

The witness stated that after the ROANOKE was turned into a troop ship he did not sleep in a hammock but had a bunk; that he was still taking care of the evaporators; that with the exception of two or three months in which he was a stoker he was on the evaporators, which was easier work; that he reported to the ship's doctor, he did not remember how many times, for stomach trouble, pains in his chest, cough and a bad cold and also a chancroid; that he had not seen his medical report, and that if his medical report showed that his only contact on shipboard was for a chancroid it was not correct; that at the time the report for chancroid was made the ship carried but one doctor and that he was the same doctor he reported to for the stomach trouble. He was discharged at Bay Ridge on September 11, 1919 at the Receiving Station; that prior to his service he was firing boilers on a sawmill where they used wood for fuel, and mining on which job he had been paid \$6.00 to \$7.00 a day; that he had worked on that job for five or six months; that he helped make a crop with his brother, they were either working on the farm or at the saw mill; worked at different mines for different people during the five or six months; was very hot in some parts of the mine and dangerous there, and therefore wouldn't work there

(Testimony of Walter Woodall)

but would get a better place. Did not remember how long he worked at any of the mines. He would quit one job and go to another, sometimes he would quit one day and get a job the same day; that he would go to work and after quitting in the morning would go to work in the afternoon for someone else; that he might have taken a week off between jobs but before he went in the service he would generally make a crop in the spring and would fire in the fall in the sawmill; that his brother ran one and he worked for him and worked for others; that he did this over a period of three years or so during which he worked for different people.

Witness stated that after he was discharged it was six weeks or two months before he went to work; that Dr. Evans treated him for stomach and gall-bladder trouble and cough; that Dr. Evans made a report to the Veterans Bureau in the form of an affidavit; did not remember what treatment he gave him for lung trouble; that this stomach and gall-bladder trouble was the same trouble for which he was operated; that it got worse and he had an operation on June 24, 1920; that at that time he did not know of the Veterans' Bureau; that Dr. Evans gave him cough medicine; that before he had the gall bladder operation he was working in the oil fields; that he worked there two periods, one for six weeks and then worked about two months more making \$4.00 to \$4.50 a day on the days that he worked; that he kept no record of his employment.

He identified his signature on an application made in August, 1920 on which it was stated that he worked from

(Testimony of Walter Woodall)

January, 1920 to May, 1920 at \$6.00 a day, but that this did not refresh his recollection as to how long he worked; that he would get sick, lay off, and then return to work; that after his operation he went to work for a railroad; that he had a physical examination before he went to work by the Company doctor who passed him for work on the railroad; he was put on the extra list subject to work at such times as he was called; that he could work most any day he wanted to; that he worked when he was called in 1920 after his operation; that he did no work in Taft and had no contact with the Veterans Bureau; between the time he arrived in Taft and stayed four or five months, and went to Los Angeles, he did nothing at all living on money that he got from home; that he came down and went to the government hospital at Sawtelle and then went in training; that while in the hospital at Sawtelle he had pills and one thing and another including diet and rest in bed; and he had an operation for appendicitis while he was there in 1921; that he was receiving compensation then of \$80.00 per month when he left the hospital and he went in vocational training; he would go to school one or two times a week for an hour or so in the evening and go out at an undertaking parolor and got paractice work in the daytime; that all the time he was there he was sick, tired and coughing, pains in the stomach and sour belches; that he tried to make all his classes; did not remember whether he did or not; if he did not feel like it he did not go; he was not sure whether he missed any classes but would lay off a day or two once in a while at the undertaking parlor. It was about the last of 1922 or the first of the year 1923 when he quit

(Testimony of Walter Woodall)

training; that his mother was sick and that he then went back to Alabama; that he was drawing compensation which he did not get for several months; that while he was in training he did not remember whether he got any medical attendance or not; that if he complained they would put him back in the hospital; but he did not believe that he did complain; that he did not remember saying to anyone that he needed medical attention nor did he report to anybody in connection with the Veterans Bureau that he wanted physical treatment. Witness states that sometime after he returned to Alabama he went to Dr. Bridges. He saw him when he went back and before he went to work for the Southern Railroad Company for the second time; that when he went back to work for the Southern Railroad for a month or so they had his record of their first examination and asked him if his health was as good as it was and they put him back to work; that the doctor did not examine him again; that he went back to the same job; that he worked there for a short while and this was about six months after his return, probably the middle of 1923; that he did not go to a doctor during that period; then went to Memphis where he worked about thirty days for the Illinois Central Railroad. Witness stated that when he went to Memphis, Tennessee to work for the Illinois Central he took a physical examination for the job and was passed and put on the extra list; that he worked when he was called but sometimes did not answer the call; that he was not on a regular run and that while he was working there he was receiving government compensation; that his compensation was cut off without an examination; that he had a fistula or something the matter

(Testimony of Walter Woodall)

with his rectum and went to the Veterans Hospital in Memphis and was operated on for that. After he came out he went to selling some shirts, he believed, and then went to Honduras; that somewhere along the end of 1923 his compensation was cut off and he did not try to get it reinstated; that when he arrived in Taylor, Honduras, the Company Doctor examined him before he got his job and passed him for work, which was routine; that he went to San Pedro in Honduras, which was in the interior a good ways back, in the higher altitude, and that he was directed to go there by the company doctor; that he remained there a couple of years and that the doctor would come and see him at the apartment; that he worked there a little while for the United Fruit Company twice, and his mother sent him a little money as he needed it; that he never wrote the Veterans Bureau and asked them to reinstate him; that he did not report to the Veterans Bureau again until 1927 when he applied for hospitalization in New Orleans; that when he returned to New Orleans and applied for hospitalization there he was unable to get a bed; that he stopped in Texas and worked for the K. C. M. & O. Railroad, the Kansas City, Missouri & Orient; that he made a few trips there, and in 1927, and that when he obtained that job he had a physical examination and was passed; that he worked there a short time on the extra list and then came to Sawtelle, California; denied that he made a statement to the doctors at Sawtelle that he had not been treated by any doctor since 1923.

(Testimony of Dr. Rayford Hodges)

REDIRECT EXAMINATION

Stated that in Texas in 1927 he worked about six or eight days, just to get enough money to go to California; that when working for the Southern Railroad he was in the switchyards subject to call from the call boy; if he felt like it he would go to work and if he didn't he wouldn't go, but that he had an opportunity to work every day if he had wanted to.

DR. RAYFORD HODGES,

a witness who testified for the plaintiff by deposition; stated that he had been engaged in the practice of his profession since 1915 having served in the army as a doctor during the war with ranks of Lieutenant and Captain; that he had known Woodall, the plaintiff, for thirty-five or thirty-six years; they lived on adjoining farms; that he first treated the plaintiff professionally in June or July of 1920 and off and on during the summer of that year; that at that time the plaintiff was complaining of a cough, bronchial condition, pain in his chest, pain in region of liver and gall bladder; that he found a chronic bronchitis and practically all the symptoms that go with it, cough, bronchial rales, chronic hacking cough and pain in the region of the gall bladder, tenderness and, best he could remember, he could outline a mass of gall bladder tumor; that after his examination Woodall had an operation for gall bladder trouble and that he came to the doctor's office for dressings, exact dates not known, but before December, 1920; said that he made the diagnosis of Woodall's case as best he could under the conditions under which he was working of gall bladder

(Testimony of Dr. Rayford Hodges)

trouble with possible gall stones or inflamed chronic bronchitis, severe, with possible tubercular condition; was not in a position to x-ray and work out a diagnosis on the tubercular; he told the plaintiff that he was suspicious of the tuberculosis and possibly had a tubercular condition; told him to take care of himself, and put him on a little phosphate of soda and gave him a little cough medicine with creosote in it; no record was made of the examination; probably treated plaintiff a dozen times or more and dressed his operative wound a few times. Stated he believed plaintiff was unable to work in 1920; that the plaintiff left and went out West but had been in and out of Scottsboro at intervals; that the doctor had seen him practically every year for the past five years; that he did not believe Woodall was able, during that time, to do manual labor continuously. Doctor was given the definition of total and permanent disability and asked whether, in his opinion, Woodall was totally and permanently disabled at the time he first treated him in 1919. Dr. stated it was his opinion the man had pulmonary tuberculosis at the time he checked him over because he had all the symptoms; stated that the temperature he had might have been from both his gall bladder condition and lung condition.

CROSS EXAMINATION

On cross examination the Doctor testified he made no record, clinical, took no sputum or fluoroscope examinations; that he believed that, at the time, Woodall had a bronchial trouble and gall bladder indisposition; that after he treated him in 1920 it was about eight years until he

(Testimony of Dr. R. R. Bridges)

saw him again; said he did not know about whether Woodall had been permanently and totally disabled since 1920; thought that the condition might have been with him since that time but had not seen him enough; finally answered the question by saying that he thought that plaintiff was totally and permanently disabled in 1920; the witness admitted there were occupations Woodall could have held down fairly well where not much physical exertion or exposure was required; did not know whether or not Woodall was employed in 1921, 1923 or 1924; said in his opinion the operation and drainage of the gall bladder trouble was successful; that his wound healed up all right and that he had temporary relief.

DR. R. R. BRIDGES,

a witness on behalf of the plaintiff, testified by deposition substantially as follows:

That his residence was Scottsboro, Alabama; that he had been practicing medicine since 1914; stated he graduated from Vanderbilt University, Nashville, Tennessee; that he knew Walter Woodall; that he first *reated* him, he thought, in the fall of 1923; could not remember the month; that he last treated him in March, 1932; that the first time he got a history and made a physical examination and told the plaintiff he thought he had tuberculosis; that he made no record and believed that the plaintiff had told him he was short of breath and had night sweats, afternoon temperature, inability to do anything; found no moist crepitant rales but that Woodall had prolongation of the breath sounds and a slight dullness of percussion notes; did not remember whether he told Woodall he had

(Testimony of Dr. R. R. Bridges)

evidence of pleurisy or not on this first examination; said he was running a slight temperature; told Woodall he based his probably diagnosis on his loss of weight and night sweats and prolonged breath sounds with afternoon temperature; and told him also he regarded him as a suggested case; that his diagnosis was pulmonary tuberculosis; that he prescribed rest. He had no records; that he lost sight of Woodall a day or two after the examination and did not see him any more until 1928 at which time he proved tuberculosis by positive sputum; that he believed he had pulmonary tuberculosis from the first time he saw him. He also stated he treated him a few weeks in 1928; he believed that Woodall might have done a little work along at times, something light when he was quiescent.

In answer to the question containing the definition of total and permanent liability, the doctor stated he would answer yes that he was totally and permanently disabled in 1923, because of pulmonary tuberculosis; stated that he believed Woodall had a lung condition before 1923 but could not say how far back he had it, some cases are fast and some slow. His opinion was that he had it several months before he saw him but the months he could not put down in figures. When he examined the sputum of the plaintiff in 1928 he found no red blood. That a patient might die from tuberculosis and never have a hemorrhage.

CROSS EXAMINATION

On cross examination the doctor admitted that some time between 1919 and 1923 the condition arise; that

(Testimony of Dr. R. R. Bridges)

plaintiff's condition was advanced far enough when the witness saw him in 1923 to say that he had tuberculosis, but how long he had it, the witness could not state; did not know what Mr. Woodall was doing at the time he examined him in 1923; had not known him previous to that time. In 1923 when he examined Woodall if he made a record he could not find it and everything was stated from memory; that he made no record of his 1928 examination; that he had examined Woodall since 1928, about a week before the deposition, (which was taken March 23, 1932); found a temperature of 99° and a pulse of 90, fine crepitant rales in the left lung, upper lobe, blood pressure, systolic 144, diastolic 118, rapid respiration; prolonged vicular murmur; distant air sounds in upper right lobe, right lung; acute laryngitis, but no examination was made of the sputum; believed his condition was worse than in 1928; stated that his prognosis was bad; that the plaintiff would get worse; believed that his condition might be arrested by proper care and treatment, the arrested condition to flare up later; stated that he knew of no industrial activity that the plaintiff had engaged in since he had known him except that the plaintiff had once tried to sell him some tailor-made shirts.

RE-DIRECT EXAMINATION

On re-direct examination he stated that he believed the plaintiff was totally and permanently disabled at his last examination, a week before the deposition.

RE-CROSS EXAMINATION

On re-cross examination he stated that he did not remember whether he saw a gall bladder operation scar

(Testimony of Dr. Marvel Beem)

or not in 1923; said there was a scar and he guessed it was gall bladder; did not know whether the operation was a success or not because he stated it was "sorter over my head".

DR. MARVEL BEEM,

called as a witness on behalf of the plaintiff, the defendant having stipulated orally, in open court, as to his qualifications, testified substantially as follows: That in 1928 he was practicing at Sawtelle, California, having graduated in 1924; that he was not specializing; that he examined Mr. Woodall in the early part of 1928; that at that time he dictated a letter from his findings and records; that after refreshing his recollection he identified a letter of February 9, 1928, and remembered that he had examined Woodall in the course of his treatment of him as his physician; that after the examination, in getting his history, the plaintiff told him that he had had a disease of the gall bladder which had been diagnosed as empyema. The doctor had referred him to the X-Ray Laboratory at the Santa Monica Hospital where he was x-rayed for gall bladder disease, and there was a positive report from the laboratory that gall bladder disease was present; that the diagnosis was made of stone in the gall bladder and chronic gall bladder trouble; that he advised Woodall at that time to have the gall bladder removed. The doctor stated that empyema of the gall bladder is a condition in which the gall bladder fills with pus; that the condition described as having existed, such as severe pains in the stomach and vomiting frequently with pains in the side and diarrhea and constipation in 1918, 1919 and 1920

(Testimony of Dr. Marvel Beem)

might be related to the gall bladder, and that it was significant that after the gall bladder had been removed in 1920 and the incision healed the same condition continued with a yellowish color of the skin; the significance was that it was often impossible to remove a gall bladder when there was an empyema present and that it would be necessary to treat the condition which leaves the gall bladder, and it is possible and often occurs that the gall bladder becomes a continual source of irritation and trouble and has to be treated again later on; that such a condition permits bacteria and poison to go through the system and affects the resistance of the body to any other diseases. Doctor further stated that it was possible and probable that at the time of the trial there were adhesions in the plaintiff's gall bladder area on account of a chronic disease; that the effect of this on his ability to follow a substantially gainful occupation continuously would depend on the severity of the symptoms and might have a great deal to do with it; that a tubercular condition of the intestines might have been present; that the fact that there was a gangrenous appendix in April, 1922 might have been related to the gall bladder trouble; that these symptoms of the gall bladder and intestinal tract and appendix would lower the general vitality and be disposed to pulmonary tuberculosis, if that is present. Doctor testified that a "hypertonic" type of stomach meant that it empties more rapidly than usual; that a cholecystitis was an inflammation of the gall bladder, a chronic condition present all the time; that that condition would have a tendency, if present, to cause a patient to vomit frequently, lose his appetite and have pains in his abdominal region; that it

(Testimony of Dr. Marvel Beem)

would affect his ability to follow continuously a substantially gainful occupation because he would be a sick man and unable to pursue his ordinary occupation, and that if the disease was superimposed with tuberculosis, it would have the tendency to aggravate the condition.

CROSS EXAMINATION

On cross examination the doctor testified that, at the time of his examination, he did not recall that he examined Woodall for a tubercular condition and had no record of it; that whether he noticed it or not would have depended on whether the patient was suffering from an acute condition in the gall bladder area and the other was more or less chronic and not bothering him at the time; did not recall whether Mr. Woodall give him any history of tuberculosis; that he thought that had Woodall said anything about tuberculosis he would have noted it; that if he had been far advanced in tuberculosis so that it would effect his general condition and health it would not necessarily have a material effect on the disease described by the doctor; stated, however, that if Woodall had had advanced tuberculosis it would have jeopardized his treatment, particularly as to an operation, and that had it been far advanced to have affected his general condition he thought he would have taken it into consideration at the time of the examination; that plaintiff's gall bladder condition back in 1919 and 1920 would undoubtedly cause adhesions; that he did not know the details of the gall bladder condition previous to his examination; and that an operation ordinarily performed for gall bladder would not necessarily produce a condition so that the man could not

(Testimony of Dr. Marvel Beem)

work, but that cases of this type that have an empyema and are operated they can have adhesions sufficiently severe to keep the person from working, which the doctor stated was physical work, not necessarily heavy but physical work; doctor stated that at the time of his examination the man was unable to work and he was complaining of acute trouble in his gall bladder area which was shown by tenderness in the gall bladder area and which condition the doctor believed could be cleared up by surgery; the doctor admitted that he knew nothing about the man's condition other than his gall bladder.

RE-DIRECT EXAMINATION

On re-direct examination the doctor stated that if previous to the time he saw Woodall he had had the same symptoms he described as when he came to him in 1923 it would indicate that the condition was sub-acute or acute at those times; that at the time of the operation in 1920, because of the accumulation of pus, it was impossible to remove the gall bladder and there was a tendency to form pus again; that it was common to have a residual inflammable condition in the gall bladder and even the formation of stones after it was drained; that if stones were present in 1920 they probably removed them. He stated that usually the drain does not form another empyema but becomes chronically inflamed and formed more stones and it is possible to have another empyema; that the plaintiff had no empyema when he saw him, which would be

(Testimony of Dr. Harry Cohn)

reflected by temperature and vomiting; that the gall bladder was closely associated with the liver and a yellow complexion might indicate that plaintiff had stones at that time, or more likely that he had an inflammation of the liver.

DR. HARRY COHN,

a witness called on behalf of the plaintiff, testified substantially as follows: That he was admitted to practice in 1908 and had specialized for twenty years in diseases of the chest; that immediately after the war witness was consultant of an advisory board for vocational certificate in Washington, then was with the United States Health Service, and then later with the United States Veterans' Bureau; that he is the Director of the Division of Tuberculosis of the Los Angeles City Health Department. The doctor was given a hypothetical question which assumed to be true the facts testified to on behalf of the plaintiff; the findings as to the X-ray examinations made of the plaintiff August 2nd, 1921, and the several findings diagnoses made in medical examinations of plaintiff made during March, April and July of 1922, in August, 1923, in February, 1928, and in January, 1929, and the physical findings of Dr. Hodges of the examination of 1920, and was given the definition of total and permanent disability which applies to these cases; and that it should also be assumed that he had possible tuberculosis present in 1920; stated that he had an opinion which was that the plaintiff was totally and permanently disabled from some time prior to the first day of January, 1920; that as reason for his

(Testimony of Dr. Harry Cohn)

opinion, the Doctor testified that a man at the age of 33 does not ordinarily or often develop tuberculosis; that he was sick enough to be diagnosed as an active case of tuberculosis in 1921, within two years from the date of discharge and, according to Dr. Hodges, was diagnosed as an active case of tuberculosis within one year from the date of discharge; that in this case when the diagnosis was first made, and within two years from the date of discharge, it showed tuberculosis involving the upper portion of both lung fields with considerable scar tissue; that it took time for tuberculosis to extend from the beginning area to one upper lobe and then spread into the opposite lung; that it was obvious the man had been suffering from tuberculosis for a longer period of time and that amount of tuberculosis, which was present at the time the first x-ray was made, had been present in that man's chest for a considerable period of time and was undoubtedly present at the time of his discharge from the service and was active at that time. Doctor stated it ordinarily takes a certain time for dormant tuberculosis to become active; it was evident that the plaintiff had considerable stresses while in service and that work he did while out of the service may have aggravated his tuberculosis but was not responsible for the development of his tuberculosis. Doctor stated that it was a mooted question as to whether the tubercular condition was aggravated by the stomach disorders; that the probabilities were that both infections were operating at the same time; that conditions like the digestive disturbance might interfere with a person's rest and digestion and so permit tuberculosis to spread.

(Testimony of Dr. Harry Cohn)

CROSS EXAMINATION

Dr. Cohn stated on cross examination that tuberculosis was curable; that as a general proposition in an advanced state it was not curable but there were many exceptions and that even in the advanced stages it might be cured; that approximately sixty or seventy per cent of so-called early cases were restored to part time working capacity; doctor stated that he would say that six months prior to the time the first doctor said he had tuberculosis he was incurable, but if he were there in 1920 and examined the man and the man possibly had tuberculosis he could not render an opinion as to whether he was curable or not; that his opinion was in 1933 and that he couldn't render an opinion as to curability in 1920; that the presence of another disease in 1920 makes the other look more unfavorable; asked specifically about tuberculosis, in which the doctor specializes, he stated that he could not express an opinion that at that time he was incurable. Doctor bases his opinion in part on the first x-ray report which was taken two years after the plaintiff's discharge, which shows a moderately advanced tuberculosis, in both lungs, and that it would require two years for that condition to develop; that it would not develop any more rapidly because of gall bladder trouble; that some parts of Honduras are extremely favorable because of the elevation, but that the running inland and to the coast, etc., might aggravate tuberculosis and if the condition was incurable at that time the running on a train would hasten the progress of the disease; that it was surprising how long a man could live under such conditions, but the doctor stated that during all this time he was permanently and totally

(Testimony of Dr. Harry Cohn)

disabled with periods of remission. The doctor stated that taking into consideration the definition of arrested tuberculosis by the National Tuberculosis Association he disagreed with the opinions of the other doctors who said that the disease was arrested; that the definition of "arrested tuberculosis" as adopted by the National Tuberculosis Association, requires that before a diagnosis of arrested tuberculosis may be made x-ray pictures must show an integration or healing of the involved area; that the physical finding must indicate that the tuberculosis is healing; that the sputum contains no evidence; that the patient has been under these conditions during a period of six months and that during the last three months of which the patient has been taking exercises of two hours daily in the form of walking or its equivalent; that there is nothing in the record showing this man had been on exercise or that the condition had lasted for the period required by the definition of the National Tuberculosis Association; that under ordinary conditions, the best that a doctor could say was that the disease was no longer active; that a doctor who had only seen the plaintiff one time was, in the opinion of the witness, not qualified to make a diagnosis of arrested tuberculosis; that he based his opinion upon the condition present at the time the first diagnosis was made and upon the findings in all the reports and on the man's present physical condition, and on the doctor's knowledge of the duration of tuberculosis and the change that may take place in a patient's lungs during the course of his tuberculosis; that he did not agree with the judgment of the other doctors; that sometimes incurability developed within six weeks or six months

(Testimony of Dr. Harry Cohn)

from the date of the onset of the disease; that he had personally examined the plaintiff. He testified that many cases of advanced tuberculosis are not discovered until pictures are taken of the chest; that the patient may be apparently well; there are cases where tuberculosis develops and it may be widespread before it comes to the surface; that a man may become totally and permanently disabled and be incurable and he can't discover it; that the man had probably had tuberculosis fifteen or twenty years but it was present several years before it was discovered; could not say that he was permanently disabled before he went into the Navy but he had some tuberculosis when he went into the navy and he became totally and permanently disabled some time prior to his discharge. The doctor further stated that he accepted the diagnosis that the doctor made two years after Woodall's discharge; that it is a very common observation to find patients who are totally and permanently disabled, having an advanced case of tuberculosis, which is probably incurable, to have them work occasionally or a little bit, or to move about the country without medical supervision or attention of any kind for several years without absolutely killing themselves; that patients come into clinics every day who are far advanced cases of tuberculosis and who are employed, and it is necessary for the doctors to frequently invoke the law to make them stop work; that sometimes the case becomes incurable within six weeks or six months from the date of onset, with the best medical supervision. Since 1922 the medical profession has learned a great deal about tuberculosis, particularly those types which start near the collar bone. In those cases advanced tuber-

(Testimony of Dr. Harry Cohn)

culosis may develop in a relatively short period of time and the patient becomes totally and permanently disabled in a relatively short period of time, and the symptoms may be so slight that the patient doesn't realize it or appreciate it. In this particular case, the doctor further stated, that he could appreciate the difficulty, for the plaintiff at that time was also suffering from another disease, which guided his symptoms and the tendency would be for the examining physician and the patient himself to concentrate upon his abdomen rather than on his chest. That unusual stress weakens the body, and allows tuberculosis to spread into the lungs, and that is what happened to the plaintiff.

RE-DIRECT EXAMINATION

The doctor stated, on re-direct examination, that it appeared that the man gave the same symptoms in 1921 that he gave at the time of his discharge, and pointed out that the disease had been spreading through both lung fields ever since its discovery in 1920.

RE-CROSS EXAMINATION

On re-cross examination the doctor stated that this type of tuberculosis did not develop quickly, it was gradual and slow and if discovered within six months after discharge it would show there was a considerable amount present; that it was impossible for this to have developed in the two years between the time of discharge and the time of the first x-ray. The doctor was asked whether or not, previous to the two year period and at the time of discharge, if the man had gone to the hospital and taken proper care and proper medical attention, what the proba-

(Testimony of Dr. Harrison M. Hawkins)

bility of a cure would have been. He stated that there were several probabilities; the most important thing would hinge upon the proper diagnosis being made at that time and the proper conditions and treatment; that he could not answer the question because he did not know, but that after the two year period and at the time the x-ray was taken, if he had gone to the hospital and taken proper care with the then existing amount of lung destruction and scarring he could not have been cured.

RE-DIRECT EXAMINATION

On re-direct examination the doctor stated that the age of 36 or 37 had an *affect* on the probability of cure as at that age tuberculosis tends to become chronic.

RE-CROSS EXAMINATION

On re-cross examination the doctor stated that the older a person gets the more readily they can form scar tissue, and therefore an action takes place in the tissues that tends to scar tissue rather than something else.

DR. HARRISON M. HAWKINS,

a witness called on behalf of the plaintiff, testified substantially as follows: That he was a practicing physician and surgeon in April and May, 1921, and had been licensed to practice in California since 1915, having graduated from Jefferson Medical College in 1914; had specialized in surgery but had done general work; that in April or May, 1921, Woodall came to him for treatment; he examined him for treatment at that time at Taft, California; that he did not have his records but he made an affidavit on or about September 13, 1921; the information was taken from

(Testimony of Dr. Harrison M. Hawkins)

the records that he then had. Witness stated that his memory would not be refreshed by inspecting the affidavit, and that, as he remembered, the plaintiff had an infection of the bowels with some disturbance of the gall bladder when he saw him in 1921. He then refreshed his recollection from the affidavit and stated that Woodall was badly fatigued and considerably emaciated and he was having a great deal of distress with his stomach in the way of digestion, and on a physical and laboratory examination discovered the bacilli which the doctor said was the real cause of plaintiff's operation before; responded to treatment rather slowly; oftentimes it is necessary to give months of treatment before the bacteria is eliminated; found no other condition that the witness could recollect except considerable adhesions about the place where the gall bladder was; claimed the man was too weak physically to follow any occupation at that time and did not remember whether any complaint was made to him about any other disease.

CROSS EXAMINATION

On cross examination the doctor stated that he thought at that time that as soon as the bacteria was eliminated the man should improve and that the adhesions about the gall bladder usually accommodate themselves as they pick up; they usually accommodate themselves as the patient increases in vitality, so that in a little time he does not notice them in doing his ordinary work. The doctor was asked whether he noticed anything that would lead him to believe the man had tuberculosis, and stated that not having his records he could not recall, but that the affidavit was made at the time of his examination when things

(Testimony of Dr. Harrison M. Hawkins)

were fresh in his memory and that if he had found any particular symptoms of tuberculosis he would have noted them, and the fact that he did not note them would lead him to say that he had found none.

RE-DIRECT EXAMINATION

On re-direct examination the doctor stated that he did not recall that he made an examination of the chest by x-ray or of the sputum; he answered that he did not necessarily mean that a tubercular condition might not have been present but he did not examine Woodall for that and did not pay any particular attention to the chest with an idea to tuberculosis.

Plaintiff's Exhibit #2, being the Navy Health Record of Walter Woodall was introduced.

Plaintiff's Exhibit #3, being the plaintiff's service record was introduced.

Plaintiff's Exhibit #4 was introduced and stipulated that it showed the record of the first period of employment of Walter Woodall with the Southern Railroad.

Plaintiff's Exhibits #5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21 and 22 were introduced in evidence, the same being reports of physical examinations, excluding therefrom, however, all history and statements of "Present Complaint" which might appear in those records, and also excluding from plaintiff's Exhibit 7, that part which refers to an examination of Dr. Magruder.

The plaintiff rested, whereupon the defendant made a motion for judgment on the ground that plaintiff had failed to establish total and permanent disability from the time the policy was in force and effect, which motion was denied without prejudice.

(Testimony of Dr. Elliott P. Smart)

DEFENDANT'S CASE

DR. ELLIOTT P. SMART,

a witness called on behalf of the defendant, testified substantially as follows: That he graduated from the Medical Department of the University of Southern California in 1912; that he had done post-graduate work in New York, particularly on chest work, particularly tuberculosis, and had specialized in that line of work ever since; that he was, and still is, for eight years prior to the trial Medical Director of the Olive View Sanitarium, Los Angeles, California, where he was still employed. He identified plaintiff's Exhibit #22 as a report of examination that he made as a special examiner of the U. S. Veterans Bureau for hospitalization purposes on July 7, 1922; that he felt at the time that the man could work and that there were a good many occupations which he could follow; that he believed at the time that the man had a curable condition, which condition was shown on the report; that it was a minimal case of tuberculosis and he had mentioned it in his report as being arrested. The doctor stated that he believed the man was no longer suffering from the acute disease, the disease had become partly healed, except from the stated point of supervision, and he felt that suitable employment, as he had set down, vocational training and supervision would carry the man out and rehabilitate him. He did not feel that the man was permanently disabled or totally disabled at all.

(Testimony of Dr. Elliott P. Smart)

CROSS EXAMINATION

On cross examination Dr. Smart stated that future history of a tubercular patient would have a bearing upon the diagnosis as to the permanent arrestment, but that that depended upon the type of involvement present; that if a man had cavitations, and particular types of cavitations, and locations, but infiltrations and fibrous without cavitation would not; that considerable cavitation would indicate that the disease had been greatly active; that if there had been extensive cavitations in the right lobe at that time of sufficient size it was a moderately advanced case and had, of course, been active; if it is active it isn't moderately active; that it is either active or *adolescent*; that considerable cavitation would indicate a considerable period of activity; that a fibrous condition would be indicated in an x-ray and with the x-rays they would have to have all the other findings to examine the x-ray; stated no x-rays were taken at the time; the doctor stated that the fact that x-rays were taken in 1921 would not aid him in his opinion unless he saw the x-rays himself; doctor stated that the surest method of diagnosis of tuberculosis is to x-ray and examination of the sputum, not just one but repeated examinations where the sputum is positive and the x-ray shows fibrillation and cavitations. The fact that one sputum examination is found to be negative does not necessarily mean that the plaintiff does not have active pulmonary tuberculosis.

RE-DIRECT EXAMINATION

The doctor stated, on re-direct examination, that they always found active sputum in an active case; that the dis-

(Testimony of Dr. Oscar S. Essenson)

ease might be present in the body and the sputum not show activity, classified as a latent and a dormant period and later breaking out again; doctor further stated that if from all probable evidence there were no findings to show active tuberculosis, and negative sputum with repeated tests, and if the x-ray is negative as to progressive lesions, he would feel that it was an arrested case, and no findings were evident, and that might exist after an active tuberculosis and a cure was possible to that extent.

RE-CROSS EXAMINATION

On re-cross examination the doctor stated that after a length of time you couldn't make a diagnosis on one examination unless you had enough previous history and findings to go with it to substantiate it. The doctor testified that he was acquainted with Dr. Fishberg and his book on tuberculosis; that Fishberg was one of the leading authorities on pulmonary tuberculosis. The doctor also stated that he had been Medical Director at Olive View for eight years, which was a tuberculosis hospital exclusively with nine hundred odd beds; that they had thousands of tubercular patients and almost 600 cases at its outside clinic.

DR. OSCAR S. ESSENSON,

a witness called on behalf of the defendant, testified substantially as follows: That he had been dealing as a specialist in tuberculosis for twenty or twenty-one years, and had been a tuberculosis examiner with the Veterans Bureau since 1920; that he graduated from Baltimore University, School of Medicine in 1899; that he did post graduate work in New

(Testimony of Dr. Oscar S. Essenson)

York and various hospitals and medical schools; that he made an examination of Woodall; identified Plaintiff's Exhibit #13; that it was the doctor's opinion based on his physical findings that the plaintiff could follow an occupation at the time he examined him; that the man had arrested tuberculosis which he characterized as a healed condition which he determined by examination substantiated by x-ray findings which he had made at that time; that he found no evidence of active tuberculosis; that there was an arrested tuberculosis of both upper lobes with no evidence of any active processes, no evidence of cavitation and the sputum was negative for TB bacilli. The examination was made on October 13, 1922. Doctor further stated there was nothing in his findings to show that the physical condition of this man was such as would interfere with his doing a normal day's work.

CROSS EXAMINATION

On cross examination the doctor stated, in answer to a question as to whether, if this man went out and worked after being told his case was arrested and within four months he had a breakdown, his diagnosis would be correct, that it would depend on what type of work the man was doing; that if a man was afflicted with tuberculosis he would not advise him to go and do a hard day's work; he could do ordinary easy work and it would do him no harm. The doctor was asked if he considered pains in the intestinal tract and suffering from gall bladder trouble would be a factor that might be considered; as no such finding was in the report it was asked as a hypothetical question, to which the doctor replied that it depended upon the type of complications; that if a man had com-

(Testimony of Dr. Frank L. Long)

plications and an intestinal trouble and gall bladder, work would do him harm; that if a patient had tuberculosis in a *cormant* or *adolescent* state, if there is a lowering of the resistance of the body, then 90% of such patients would again become active. The doctor stated he was personally acquainted with Dr. Fishberg and with his work on tuberculosis and to a certain extent he agreed with Dr. Fishberg, who is considered an authority.

DR. FRANK L. LONG,

a witness called on behalf of the defendant, testified substantially as follows: That he had been specializing in nervous and mental diseases; that he has been connected with the Veterans Administration since 1920; that he examined Walter Woodall on July 20, 1921; that it was a general examination; that he made no examination of the lung condition; that he only identified what is set down in the examination report; that the man was transferred to the Soldier's Home for further observation and treatment; that the diagnosis was a tentative diagnosis and if so the condition was probably remedial and could have been made better or cured if the diagnosis was confirmed.

CROSS EXAMINATION

On cross examination the doctor stated he had no recollection of the man; he was asked if he was a psychiatrist; stated that he made a few physical examinations, and the most in the last 10 or 12 years had been in the psychopathic department; that his examination was a superficial report for Dr. Foley who happened to be the Assistant in charge of the office.

(Testimony of Dr. Frederick F. DuPree)

DR. FREDERICK F. DUPREE,

a witness called on behalf of the defendant, testified substantially as follows: That he had been in the employment of the Veterans Administration since April 6, 1926, following the line of tuberculosis and psychopathic work; that he was specializing in tubercular work in the Veterans Hospital from 1923 to about three years prior to the trial, and was also in the Soldiers Tuberculosis Home. He received a degree in the University of Louisiana and also got a degree from the University of Tennessee in 1919, in Memphis. He identified Plaintiff's Exhibit #21, and his signature thereon, as the examination he made of Walter Woodall; that the report correctly reflected his diagnosis at that time; stated that God Almighty was the only one who could say that tuberculosis could be cured or not; that Dr. Fishberg stated in his book that whenever a doctor pronounces how long a man would live he would be sure of only what could be unseen, and that he could only predicate results on judgment and experience; they didn't think the man had active tuberculosis; that he could use reasonable judgment and say that he thought he was curable, that he thought he had no active tuberculosis and hence nothing to cure on July 8, 1927; that the plaintiff stated at the time that he had an "operation for gall bladder and appendicitis 1920 and 1922, West Ellis Hospital, Tennessee, Soldiers Home, California, 1921; Government Hospital No. 88, Memphis, Tennessee, 1923. Since then have not been treated either in hospitals or by private physicians." That he couldn't say that the plain-

(Testimony of Dr. Frederick F. DuPree)

tiff made that statement to him at that time; the symptoms were stated to a board of three doctors; that the statement about the plaintiff not having been treated was given to a physician, whether to him or not he couldn't remember, but was taken by a physician in the Receiving Ward. The doctor could not remember whether the statement was made to him or to one of the other doctors. The Board hasn't time to sit down and take history every time a patient comes before the Board, it would unduly prolong our examination. Sometimes the past history is taken from the doctor's findings in the receiving ward.

CROSS EXAMINATION

On cross examination the Doctor stated that frequently it is difficult to make a diagnosis of arrested tuberculosis without following the case further and he had recommended, for that reason, three months further hospitalization. He identified part of his examination as the x-ray made by Dr. Tinney June 27, 1927, which showed "Both lungs from the apex to the base show confluent and discrete mottling, with a questionable cavity in the right upper;" and stated that that meant the tissue of the lung was more or less abnormal, and it therefore, at that time, *have* been difficult to say whether it was active or inactive, so the diagnosis of apparently arrested is based somewhat on what took place afterwards; that the x-ray showed the area more or less infiltrated from the top to bottom of the lung so that it would be difficult for the witness to say whether the tuberculosis was active or inactive. The doctor stated that the "With a questionable cavity in the right upper" was put down because sometimes

(Testimony of Dr. Frederick F. DuPree)

shadows are interpreted as cavities and are not cavities; that the cavity has to be connected up with physical findings, and assuming the cavity was there he would have to know the degree of the cavitation and size and duration to case a fair prognosis on the case. The doctor stated that the term "vena cava is engorged" meant that the venous return of the upper portion of the thorax and the upper extremity of the head were larger than normal; that that would have a tendency to cause congestion throughout the lung and make an x-ray picture simulate tuberculosis; that it would have a bad effect on the general health and he would have a cough and symptoms of tuberculosis and physical findings would resemble tuberculosis; that to answer whether that man could follow a substantially gainful occupation would require that he know what caused the condition; that the statement about the superior vena cava being engorged shows the opinion of the x-ray man, or rather his impression. The doctor stated that it is impossible to make a definite diagnosis in the outset of the disease; that no doctor can tell whether he will die or get well unless he is in a rigor mortis state; that the fact that nine months after his examination, and on March 1, 1928, the man was rated totally and permanently disabled would show that his diagnosis made in July, 1927, was wrong and that if the man had activity he missed it, but that it hardly seemed reasonable that a man would be doing tubercular work for five to ten years and with all the laboratory methods, that he would miss a far advanced, active case of tuberculosis. The doctor testified that if a man had sour belchings, poor appetite and alternative periods of *diarrhea* and constipation, and

(Testimony of Dr. M. M. Nolan)

emypema of the gall bladder in 1920 parallel with his tubercular history, it would have a tendency to lower his resistance and keep the tubercular processes lower and hinder the recovery, if he did not have that gall bladder trouble. It would have a bearing on it because the only way a man could get well would be to eat himself out, but the fact that the man had a chronic gall bladder only would aggravate his condition to get well of tuberculosis, and might have a tendency to get a tuberculosis condition to flare up from an *adolescent* state.

The government then offered the statement of Walter Woodall which was made Exhibit A.

DR. M. M. NOLAN,

a witness for the defendant, testified by deposition substantially as follows:

That he graduated from Jefferson Medical College in Philadelphia in June, 1912; since 1916 he had been engaged in general practice in Birmingham, Alabama; between 1912 and 1916 had three years hospital work in Philadelphia; that on September 11, 1919, while with the Veterans' Administration he examined Walter Woodall. He identified the copy of his examination report which showed a finding on physical examination of negative with the exception of an operation scar over the gall bladder region with some tenderness and rigidity over this region; that plaintiff complained at the time that he had not fully recovered; that he examined the heart and it was normal; that the general physical appearance was good, and that Wood-

(Testimony of Dr. Thomas V. Magruder)

all was not totally and permanently disabled at the time of his examination. He further stated that the scar had healed at the time of his examination; that his prognosis was fair.

CROSS EXAMINATION

Upon cross examination the doctor stated that he had no independent recollection and that he was basing his testimony on his report dated August 30, 1920. The doctor stated he did not make any sputum tests or chest examination or laboratory examination; that the examination of the chest was limited to physical symptoms; that he did not, of his own knowledge, know whether adhesions had been left from the gall bladder operation; that adhesions are generally left; that in a small proportion of cases there may be a return of pus after the operation even after draining; that he was not a specialist in tuberculosis and could not say positively that there was not tubercular germs in the man's lungs at the time; that his diagnosis was subject to error as that of any other physician.

DR. THOMAS V. MAGRUDER,

a witness on behalf of the defendant, testified by deposition substantially as follows: That he graduated from Mississippi College in 1906, Tulane University in 1910, one year's interne at St. Vincent Hospital, Birmingham, Alabama; that on August 30, 1920, he was a Public Health surgeon and examined Walter Woodall; that he had no independent recollection of having examined the plaintiff, and based his

(Testimony of Dr. Thomas V. Magruder)

testimony on his report; found that he had recently had a gall bladder operation, but seemed to have completely recovered and was not complaining of any symptoms; the prognosis was good as far as he was able to determine from a superficial examination and history; that he was not at that time totally and permanently disabled from following a substantially gainful occupation.

CROSS EXAMINATION.

On cross examination the doctor stated he had no independent recollection of the plaintiff; that he took no x-rays and that the principal part of his examination was to see whether the abdominal wound had healed from the outside. He did not know, and it would not be possible for him to ascertain from the type of examination he made, what the conditions were below the surface; did not remember complaints of ill health or tenderness over the region of the scar; made no general physical examination or examination of the lungs; made no x-ray; that his opinion regarding ability to follow a substantially gainful occupation was based on the external appearance of the wound and history given at that time; did not know at the time of the examination whether there was still infection in the area from which the gall bladder had been removed or whether there were adhesions; that adhesions under certain circumstances totally disable a man; stated he did not know whether the operation in this case was for drainage or removal of the gall bladder; that in order to foretell the extent of recovery in an operation of this kind contact should be made for a fairly extended period of time; that he saw this man once.

(Testimony of Dr. Louis F. Boyd)

DR. LOUIS F. BOYD,

a witness on behalf of the defendant, testified by deposition substantially as follows: That he had practiced at Memphis since 1917, after graduating in 1915 at the University of Tennessee as a general practitioner; that on April 10, 1923, while a part-time examiner for the Veterans Bureau, he made an examination of Walter Woodall; that the complaint at that time was pain in the chest and a cough, general weakness and the passing of mucous and pus in the stools; that he made a general physical examination with special attention to the chest. The doctor stated he had treated, with the exception of his hospital work, twenty five or fifty cases of tuberculosis and had examined many cases; that at the time of his examination of Woodall, his weight was 145, which, according to Woodall's statement, was normal; that the lowest in the year was 140, and the highest 145, therefore there was no loss of weight; sputum was negative at the examination as reported by the laboratory; that there was some impaired resonance in first and third rib anteriorly over both upper lungs and harsh breath sound above and below scapula, above the scapula over the left lung and above and below clavicle in second interspace and above the scapula over the right lung; that the record showed that the "applicant failed to report to hospital for laboratory work and X-ray of G. I. tract"; that the examination in this case was made

(Testimony of Dr. Walter T. Swink)

at 2:00 p. m. the temperature was 98.6 and pulse 78, which was normal; that his diagnosis was tuberculosis in both upper lobes, inactive. He testified, in answer to a question giving the definition of total disability that the plaintiff was able, at that time to follow the gainful occupation of freight brakeman, the doctor being familiar with the duties, and also could follow a clerical occupation or other occupations given by the doctor.

DR. WALTER T. SWINK,

a witness for the defendant, testified by deposition substantially as follows: That he was engaged in active practice for thirty six years following internal medicine, and that at one time he was doing tuberculosis work for about three years in hospitals at Memphis; that he identified a report, and refreshed his recollection; stated that he made an examination of Walter Woodall on April 10, 1923, consuming probably thirty or forty minutes; the examination was a general physical examination; that he arrived at a tentative diagnosis of fibrosis of both upper lobes of the lungs, inactive if tuberculosis. In answer to a question as to whether or not the plaintiff was totally disabled at the time, the question containing the definition of total and permanent disability, the doctor stated that he was not; that he could have followed the occupation of a clerk or bookkeeper or freight brakeman, which duties he was familiar with.

(Testimony of Dr. W. H. Greer)

DR. W. H. GREER,

a witness on behalf of the defendant, testified by deposition substantially as follows: That he had been practicing for thirty years; that he knew Walter Woodall having examined him for railroad service on September 10, 1920. He identified his report and stated it correctly represented his findings; that at the time of his examination he believed that the man was able to follow continuously a substantially gainful occupation.

CROSS EXAMINATION

On cross examination the doctor stated he was a surgeon for the Southern Railway Company at the time he made the examination. He admitted that the examinations were really incomplete physical examinations; stated that he made a physical examination, examined the heart and lungs with stethoscope, inspected the joints, examined the man for hernia; that the vision and hearing were within the requirements for the Southern Railroad service and passed him. His examination was to ascertain the condition of plaintiff's eyes and hearing, and whether he had fair use of his arms and hands; stated that the examination took about twenty minutes and that he formed his opinion as a result of the examination made as related by witness; stated that he did not know whether Woodall went to work or not.

(Testimony of Dr. W. H. Greer)

RE-DIRECT EXAMINATION.

On re-direct examination he stated that the lungs and heart were in good condition and he found no hernia.

RE-CROSS EXAMINATION.

That the examination of the lungs was made only with a stethoscope; no examination was made of the sputum; that the examination of plaintiff's lungs was not conclusive.

Both counsel for the plaintiff and counsel for the defendant then rested their cases.

Thereafter, on to-wit: June 30, 1933, the court made and entered its minute order as follows:

“Findings and judgment are ordered for the plaintiff against the defendant pursuant to the prayer of plaintiff's complaint and in accordance with written memorandum of conclusions of the court. Filed herein this day.

“Messrs. Volney P. Mooney and Sylvester Hoffman are allowed ten per cent of the amount of recovery by plaintiff as attorneys fees herein. Exception noted and allowed to defendant.” Dated at Los Angeles, California, June 30, 1933.

Thereafter and on September 5, 1933, the following stipulation was filed together with the defendant's Proposed Findings of Fact and Conclusions of Law:

“IN THE DISTRICT COURT OF THE UNITED
STATES IN AND FOR THE SOUTHERN
DISTRICT OF CALIFORNIA
CENTRAL DIVISION.

WALTER WOODALL,)	
	PLAINTIFF	) No. 4247 M.
	VS	) STIPULA-
UNITED STATES OF AMERICA	)	TION.
	DEFENDANT)

IT IS HEREBY STIPULATED by and between Walter Woodall, Plaintiff, Volney P. Mooney, Jr. and Sylvester Hoffman, his attorneys and defendant, United States of America, by Peirson M. Hall, United States Attorney for the Southern District of California, and Clyde Thomas, Assistant United States Attorney for said district, that the hereunto attached Defendant's Proposed Findings of Fact and Conclusions of Law may be filed nunc pro tunc as of the 7th day of July, 1933, and prior to the entry of judgment in the above entitled action; that defendant's objection to the approval of plaintiff's proposed Findings of Fact and Conclusions of Law and the entry of Judgment thereon and exception noted to the ruling of the Court thereon may be entered nunc pro tunc as of said 7th day of July, 1933, and that an except-

tion may be noted, nunc pro tunc as of July 7, 1933, to the ruling of the Court refusing to accept Defendant's Proposed Findings of Fact and Conclusions of Law.

Dated September 5th, 1933.

VOLNEY P MOONEY JR

Volney P Mooney Jr.

SYLVESTER HOFFMAN

Sylvester Hoffman

Attorneys for Plaintiff

PEIRSON M HALL

United States Attorney

By CLYDE THOMAS

Assistant United States Attorney

IT IS SO ORDERED:

PAUL J McCORMICK

United States District Judge.

IN THE DISTRICT COURT OF THE UNITED
STATES IN AND FOR THE SOUTHERN
DISTRICT OF CALIFORNIA
CENTRAL DIVISION

WALTER WOODALL	)	NO. 4247 M.
		DEFEND-
Plaintiff	)	ANT'S PRO-
		POSED FIND-
vs	)	INGS OF
		FACT AND
UNITED STATES OF AMERICA	)	CONCLU-
		SIONS OF
Defendant	)	LAW.

This matter came on regularly for trial on May 31, 1933, before the Honorable Paul J. McCormick, one of the judges of the above entitled court, trial by jury having been waived in writing by both the parties, plaintiff appearing in person and by his counsel, Volney P. Mooney, Jr., and Sylvester Hoffman, of counsel, and the defendant appearing by Peirson M. Hall, United States Attorney for the Southern District of California, and Clyde Thomas, Assistant United States Attorney for said District, and Dustin Gustin, of counsel and evidence, both oral and documentary, having been introduced, and the cause having been heretofore submitted to the court for its decision, and the court having been fully informed in the premises, and having considered the law and the evidence, now makes its Findings of Fact as follows:

I.

That it is true that the plaintiff, Walter Woodall, is a citizen of the United States of America, and at the time

of the commencement of this action was and now is a resident of Los Angeles County, State of California.

II.

That it is true that the plaintiff, Walter Woodall, enlisted in the armed forces of the United States on the 31st day of December, 1917, and that he served in said armed forces from said date up to and including the 11th day of September, 1919, when he was honorably discharged from said service; that during all of said times, he was employed exclusively in the active service of the Army of the United States.

III.

That while in the said Army of the United States of America, plaintiff applied for and was granted War Risk Insurance in the sum of \$5,000.00; that there was thereafter issued to him a certificate of War Risk Insurance and that there was deducted from his pay all premiums due on said War Risk Insurance up to and including the month of December, 1919, and that said War Risk Insurance lapsed for non-payment of premium on the first day of February, 1920.

IV.

That plaintiff did not become totally disabled prior to the first day of February, 1920, from tuberculosis, or any other disability, and did not become permanently disabled prior to the said first day of February, 1920, from tuberculosis or any other disability.

V.

That a disagreement exists between the plaintiff and defendant.

CONCLUSIONS OF LAW.

From the above findings of Fact, the Court makes the following Conclusions of Law :

That the plaintiff, Walter Woodall, is not entitled to recover anything by his complaint and the defendant is entitled to a judgment, that plaintiff take nothing, and defendant be awarded its costs.

Dated this day of , 1933.

United States District Judge.

Approved as to form as provided by Rule 44:

VOLNEY P MOONEY JR

By.....
Attorneys for Plaintiff.

The above Proposed Findings of Fact and Conclusions of Law are rejected and denied and an exception noted to the defendant as of the 7th day of July, 1933, the time which judgment was entered in the above entitled case, and the Clerk directed to enter such order as if made at that time.

Dated this day of 1933.

United States District Judge.

That the time to settle and file the bill of exceptions has been extended by leave of court to March 30, 1934, by the Honorable Paul J. McCormick, United States District Judge.

That the foregoing is all of the evidence received in said cause and the defendant, the United States of America, prays that the same may be allowed, settled, signed and sealed by the Honorable Judge before whom the case was tried, pursuant to the statute in such case made, to be filed and made part of the record herein, which is done accordingly this 30 day of March 1934, which is within the time heretofore granted by the Court for the presenting and filing of the said bill of exceptions herein.

IT IS HEREBY STIPULATED by and between counsel by the respective parties in this cause that the foregoing bill of exceptions is a full and correct copy of all of the evidence offered and receive at the trial thereof.

Dated this 30th day of March 1934.

Volney P Mooney Jr.
 Volney P. Mooney, Jr.
 Sylvester Hoffmann
 Sylvester Hoffman

Attorneys for Plaintiff
 and

Madison L Hill
 For U. S. Attorney
 Peirson M Hall
 PEIRSON M. HALL
 United States Attorney.

Hugh L. Dickson
 HUGH L. DICKSON
 Assistant United States Attorney
 Madison L Hill
 MADISON L. HILL,
 Attorney, Department of Justice.
 Attorneys for Defendant.

The ABOVE AND FOREGOING BILL OF EXCEPTIONS IS SETTLED AND ALLOWED HEREBY:

Geo. Cosgrave

United States District Judge in place of Judge McCormick,
who is out of Judicial District.

[Endorsed]: No. 4247 M In the District Court of the United States for the Southern District of California Central Division Walter Woodall Plaintiff, vs. United States of America, Defendant. BILL OF EXCEPTIONS. Filed Mar 30 1934 R. S. Zimmerman, Clerk By Edmund L. Smith Deputy Clerk

IN THE DISTRICT COURT OF THE UNITED
STATES OF AMERICA IN AND FOR THE
SOUTHERN DISTRICT OF CALIFOR-
NIA CENTRAL DIVISION

WALTER WOODALL,)	
)	
	)	Plaintiff,
)	
	)	No. 4247-M
vs.	)	STIPULA-
	)	TION
UNITED STATES OF AMERICA,)	
)	
	)	Defendant.

IT IS HEREBY STIPULATED by and between the plaintiff and defendant, through their respective counsel, that the Bill of Exceptions may be settled and signed by any United States District Judge in the absence of the Hon. Paul J. McCormick.

Dated: March 29th, 1934.

VOLNEY P. MOONEY, JR.

Attorney for Plaintiff

By Sylvester Hoffmann

Sylvester Hoffmann

Of Counsel

PEIRSON M. HALL,
U. S. Attorney

By:
Assistant U. S. Attorney

Madison L. Hill

Madison B. Hill

Attorney, Dept. of Justice
Attorneys for Defendant

[Endorsed]: No. 4247-M In the United States District Court in and for the Southern District of California Central Division Walter Woodall, Plaintiff, vs. United States of America, Defendant. STIPULATION Filed Mar 30 1934 R. S. Zimmerman, Clerk By Edmund L. Smith Deputy Clerk Volney P. Mooney, Jr. Attorney at Law 818 Chester Williams Building 215 West Fifth street, Los Angeles Phone MUtual 8208 Attorney for Plaintiff.

IN THE DISTRICT COURT OF THE UNITED
 STATES IN AND FOR THE SOUTHERN
 DISTRICT OF CALIFORNIA
 CENTRAL DIVISION

WALTER WOODALL,)	
)	
	)	Plaintiff,
)	
vs.	)	No. 4247-M
)	
UNITED STATES OF AMERICA,)	
)	
Defendant.)	

ORDER EXTENDING TIME WITHIN WHICH TO
 SERVE AND FILE BILL OF EXCEPTIONS
 AND EXTENDING TERM

On motion of Peirson M. Hall, United States Attorney for the Southern District of California, and Jack L. Powell, Assistant United States Attorney for said District, and good cause appearing therefor;

IT IS ORDERED that the time within which the Defendant herein may serve and file its proposed Bill of Exceptions herein is hereby extended to and including October 7, 1933;

IT IS FURTHER ORDERED that for the purpose of making and filing Bill of Exceptions herein, and the making of any and all motions necessary to be made within the Term in which the Judgment herein was entered, the Term of this Court is hereby extended to and including October 7, 1933.

DATED: July 18, 1933.

Wm. P. James

United States District Judge.

[Endorsed]: No. 4247-M District Court of the United States Southern District of California Central Division Walter Woodall, Plaintiff, vs. United States of America, Defendant. ORDER EXTENDING TIME WITHIN WHICH TO SERVE AND FILE BILL OF EXCEPTIONS AND EXTENDING TERM. Filed Jul 18 1933 R. S. Zimmerman, Clerk By Thomas Madden Deputy Clerk

IN THE DISTRICT COURT OF THE UNITED
STATES IN AND FOR THE SOUTHERN
DISTRICT OF CALIFORNIA
CENTRAL DIVISION

WALTER WOODALL,)	
)	
	)	Plaintiff,
)	
vs.	)	No. 4247-M
)	
UNITED STATES OF AMERICA,)	
)	
Defendant.)	

ORDER EXTENDING TIME WITHIN WHICH TO
SERVE AND FILE BILL OF EXCEPTIONS
AND EXTENDING TERM

On motion of Peirson M. Hall, United States Attorney for the Southern District of California, and Clyde Thomas, Assistant United States Attorney for said District, and good cause appearing therefor,

IT IS ORDERED that the time within which the defendant herein may serve and file its proposed Bill of Exceptions herein is hereby extended to and including January 15, 1934;

IT IS FURTHER ORDERED that for the purpose of making and filing Bill of Exceptions herein, and the making of any and all motions necessary to be made within the Term in which the Judgment herein was entered, the Term of this court is hereby extended to and including January 15, 1934.

DATED: October 7th, 1933.

Paul J. McCormick
United States District Judge.

[Endorsed]: No. 4247-M District Court of the United States Southern District of California Central Division Walter Woodall, Plaintiff vs. United States of America, Defendant ORDER EXTENDING TIME WITHIN WHICH TO SERVE AND FILE BILL OF EXCEPTIONS AND EXTENDING TERM. Filed Oct 7-1933 R. S. Zimmerman, Clerk By L. Wayne Thomas Deputy Clerk.

IN THE DISTRICT COURT OF THE UNITED
 STATES IN AND FOR THE SOUTHERN
 DISTRICT OF CALIFORNIA
 CENTRAL DIVISION

WALTER WOODALL)	
)	
	)	Plaintiff
)	
-vs-	)	No. 4247-M
)	
UNITED STATES OF AMERICA)	
)	
	)	Defendant

ORDER EXTENDING TIME WITHIN WHICH TO
 SERVE AND FILE BILL OF EXCEPTIONS
 AND EXTENDING TERM

On Motion of Peirson M. Hall, United States Attorney for the Southern District of California, and Madison L. Hill, Attorney, Department of Justice for said District, and good cause appearing therefor,

IT IS ORDERED that the time within which the defendant herein may serve and file its proposed Bill of Exceptions herein is hereby extended to and including February 15, 1934;

IT IS FURTHER ORDERED that for the purpose of making and filing Bill of Exceptions herein, and the making of any and all motions necessary to be made within the Term in which the Judgment herein was entered, the Term of this court is hereby extended to and including February 15, 1934.

DATED: JANUARY 8, 1934

Frank H. Kerrigan
United States District Judge.

[Endorsed]: No. 4247-M District Court of the United States Southern District of California Central Division Walter Woodall Plaintiff vs. United States of America Defendant ORDER EXTENDING TIME WITHIN WHICH TO SERVE AND FILE BILL OF EXCEPTIONS AND EXTENDING TERM Filed Jan 8-1934 R. S. Zimmerman, Clerk By L. Wayne Thomas Deputy Clerk

IN THE DISTRICT COURT OF THE UNITED
STATES IN AND FOR THE SOUTHERN
DISTRICT OF CALIFORNIA
CENTRAL DIVISION

WALTER WOODALL,	)	No. 4247-M
)	
	)	Plaintiff,
	)	ORDER
	)	EXTENDING
vs.	)	TIME WITHIN
	)	WHICH TO
UNITED STATES OF AMERICA,	)	SERVE AND
	)	FILE BILL OF
Defendant.	)	EXCEPTIONS.

On motion of Hugh L. Dickson, Assistant United States Attorney for the Southern District of California, and Madison L. Hill, Attorney, Department of Justice, and good cause appearing therefor,

IT IS ORDERED that the time within which the defendant herein may serve and file its proposed Bill of Exceptions is hereby extended to and including March 30th, 1934.

IT IS FURTHER ORDERED that for the purpose indicated and for the purpose of perfecting the appeal in this case, the term is extended to and including March 30th, 1934.

Dated: February 6, 1934.

Paul J McCormick

United States District Judge.

[Endorsed]: No. 4247-M In the District Court of the United States for the Southern District of California Central Division Walter Woodall, Plaintiff, vs. United States of America, Defendant. ORDER EXTENDING TIME WITHIN WHICH TO SERVE AND FILE BILL OF EXCEPTIONS. Rec copy this 7th day of Feb. 1934—Volney P. Mooney, Jr. By M S. Atty for Plaintiff Filed Feb 7-1934 R. S. Zimmerman, Clerk By L. Wayne Thomas Deputy Clerk

IN THE DISTRICT COURT OF THE UNITED
 STATES IN AND FOR THE SOUTHERN
 DISTRICT OF CALIFORNIA
 CENTRAL DIVISION

WALTER WOODALL,)	
)	
	)	Plaintiff,) No. 4247-M
)	
- vs -	)	PETITION
	)	FOR APPEAL
UNITED STATES OF AMERICA,)	
)	
Defendant.)	

TO: HONORABLE PAUL J. McCORMICK, Judge of
 the above entitled Court.

Comes now the defendant, United States of America,
 by Peirson M. Hall, United States Attorney for the
 Southern District of California, and Clyde Thomas, As-
 sistant United States Attorney for said District and
 feeling itself aggrieved by the Judgment entered in this
 cause, hereby prays that appeal may be allowed, to-wit:
 From the United States District Court for the Southern
 District of California to the United States Circuit Court
 of Appeals for the 9th Circuit, and in connection with this

Petition, petitioner hereby presents its Assisgnment of Errors.

Dated October 6th 1933.

Peirson M. Hall
PEIRSON M. HALL,
United States Attorney.

Clyde Thomas
CLYDE THOMAS,
Assistant United States
Attorney.
Attorneys for Defendant.

[Endorsed]: No. 4247-M District Court of the United States Southern District of California Central Division Walter Woodall, Plaintiff, vs. United States of America, Defendant. PETITION FOR APPEAL Filed Oct 7-1933 R. S. Zimmerman, Clerk By L Wayne Thomas Deputy Clerk

IN THE DISTRICT COURT OF THE UNITED
 STATES IN AND FOR THE SOUTHERN
 DISTRICT OF CALIFORNIA
 CENTRAL DIVISION

WALTER WOODALL,)	
)	
	)	Plaintiff,
	)	No. 4247-M
- vs -)	
	)	ASSIGNMENT
UNITED STATES OF AMERICA,	)	OF ERRORS
)	
Defendant.)	

The defendant, United States of America, by Peirson M. Hall, United States Attorney for the Southern District of California, and Clyde Thomas, Assistant United States Attorney for said District, in connection with Petition for Appeal, files the following Assignment of Errors upon which it will rely in presenting the appeal in this cause from a Judgment entered herein on the 7th day of July, 1933.

I

That the District Court erred in making and entering its finding No. 5, as follows:

"5. That it is true that while serving the defendant as aforesaid and prior to the date of the honorable discharge of plaintiff as aforesaid mentioned, plaintiff here-

in contracted certain diseases, injuries and disabilities resulting in and known as pulmonary tuberculosis, gall bladder disabilities and other disabilities.”

II.

That the District Court erred in making and entering its finding No. 6 as follows:

“6. That it is true that under the provisions of the said Act and other Acts amendatory thereof, hereinbefore described and under and by virtue of the terms of the policy of insurance issued by defendant herein to plaintiff, plaintiff is entitled to the payment of the sum of \$28.75 for each and every month that he may be permanently and totally disabled.”

III

That the District Court erred in making and entering its finding No. 7 as follows:

“That it is true that said diseases, injuries and disabilities, have continuously since the month of November, 1919, rendered and still do render plaintiff, Walter Woodall, wholly unable to follow continuously any substantially gainful occupation; that such diseases, injuries and disabilities are of such a nature and founded upon such conditions that it is reasonably certain they will continue throughout plaintiff’s lifetime in the same or greater degree so as to prevent him from following continuously any substantially gainful occupation. That plaintiff has been ever since the month of November, 1919,

and still is totally and permanently disabled by reason of and as a direct and proximate result of such disabilities above set forth.”

IV

The District Court erred in making and entering its finding No. 11 as follows:

“11. That it is true that the aforesaid policy of war risk term insurance was in full force and effect during the month of November, 1919, the date upon which the plaintiff was and became and ever since has been permanently and totally disabled for insurance purposes.”

V

The District Court erred in making and entering its Conclusion of Law No. 1 as follows:

“1. That the insured, to-wit: the plaintiff, Walter Woodall, became permanently and totally disabled during the month of November, 1919, and while said \$5,000.00 policy of war risk term insurance was in full force and effect, and that at all times from and after said month of November, 1919, the plaintiff was, ever since has been and now is totally and permanently disabled.”

VI

That the Court erred in making and entering its Conclusion of Law No. 2 as follows:

“2. That the plaintiff herein is entitled to recovery from the defendant, United States of America, in accordance with the said war risk term insurance contract

and the laws applicable thereto, monthly installments in the sum of \$28.75 each for each and every month commencing with the month of November, 1919, and continuously thereafter as long as he lives and continues to be permanently and totally disabled.”

VII

That the District Court erred in making and entering herein its Judgment for the plaintiff.

VIII

That the District Court erred in denying Findings of Fact and Conclusions of Law as proposed by the defendant.

IX

That the District Court erred in failing and refusing to find as proposed by defendant that plaintiff did not become totally disabled prior to the 1st day of February 1920 from tuberculosis, or any other disability, and did not become permanently disabled prior to the said 1st day of February 1920 from tuberculosis or any other disability.

X

That the District Court erred in failing and refusing to make and enter its Conclusions of Law that the plaintiff, Walter Woodall, is not entitled to recover anything by his complaint and the defendant is entitled to a judgment, that plaintiff take nothing, and defendant be awarded its costs.

XI

That the District Court erred in denying defendant judgment as proposed by the defendant.

XII

That the District Court erred in denying defendant's Motion for Judgment at the conclusion of the evidence.

Peirson M. Hall
PEIRSON M. HALL,
United States Attorney.

Clyde Thomas
CLYDE THOMAS,
Assistant United States
Attorney.
Attorneys for Defendant.

[Endorsed]: No. 4247-M District Court of the United States Southern District of California Central Division Walter Woodall, Plaintiff vs. United States of America, Defendant ASSIGNMENT OF ERRORS Filed Oct 7-1933 R. S. Zimmerman, Clerk By L. Wayne Thomas Deputy Clerk

IN THE DISTRICT COURT OF THE UNITED STATES IN AND FOR THE SOUTHERN DISTRICT OF CALIFORNIA
CENTRAL DIVISION

WALTER WOODALL,)	
)	
	)	Plaintiff,
	)	No. 4247-M
)	
- vs -	)	ORDER
	)	ALLOWING
UNITED STATES OF AMERICA,	)	APPEAL
)	
Defendant.)	

IT IS HEREBY ORDERED that the appeal prayed for in the Petition for Appeal filed in the above entitled cause be allowed.

Dated October 7th 1933.

Paul J McCormick
United States District Judge

[Endorsed]: No. 4247-M District Court of the United States Southern District of California Central Division Walter Woodall, Plaintiff vs. United States of America, Defendant. ORDER ALLOWING APPEAL Filed Oct 7-1933 R. S. Zimmerman, Clerk By L. Wayne Thomas, Deputy Clerk

IN THE UNITED STATES CIRCUIT COURT OF
APPEALS FOR THE NINTH CIRCUIT

UNITED STATES OF AMERICA,)	
)	
	)	Appellant,
)	
-vs-	)	No.
)	
WALTER WOODALL,)	
)	
	)	Appellee,

ORDER ALLOWING ORIGINAL EXHIBITS TO
BE FORWARDED TO THE CIRCUIT COURT
OF APPEALS ON REVIEW IN LIEU OF IN-
CORPORATION IN TOTO IN THE RECORD

It is hereby ordered that, subject to the approval of the Justices of the United States Circuit Court of Appeals, the original exhibits offered in evidence at the trial of the above-entitled cause in this court and consisting mainly of medical examinations from the files and records of the United States of America, be forwarded to the Circuit Court of Appeals with the record to save the expense of setting forth the same in detail in the record and to save the volume thereof.

(Signed) Paul J. McCormick.
United States District Judge.

APPROVED:

(Signed) Volney P. Mooney, Jr.
Attorney for Plaintiff.

GOOD CAUSE appearing therefor, it is ordered that the original exhibits in the above-entitled cause may be

submitted to this court in lieu of being printed in *hec verba*
in the record.

(Signed) Curtis D. Wilbur
United States Circuit Judge

[Endorsed]: Filed May 17, 1934, Paul P. O'Brien,
Clerk.

[Endorsed]: Filed May 18 1934 R. S. Zimmerman,
Clerk By Edmund L. Smith Deputy Clerk

IN THE DISTRICT COURT OF THE UNITED
STATES IN AND FOR THE SOUTHERN
DISTRICT OF CALIFORNIA
CENTRAL DIVISION

WALTER WOODALL)	
	)	No. 4247-M
	)	Plaintiff
	)	PRAECIPE
-vs-	)	FOR
	)	TRANSCRIPT
UNITED STATES OF AMERICA	)	OF RECORD
)	
	)	Defendant

TO THE CLERK OF THE ABOVE COURT:

You are hereby requested to make a Transcript of the
Record to be filed in the United States Circuit Court of
Appeals for the Ninth Circuit, pursuant to an appeal
filed and allowed in the above entitled cause, and to in-

clude in such Transcript of Record the following papers and exhibits, to-wit:

1. Complaint
2. Answer
3. Stipulation Waiving Jury.
4. Minutes of Trial May 31, 1933
5. Minute Order of June 30, 1933
6. Memorandum Opinion of the Court filed June 30, 1933
7. Order extending Time Within Which to Serve and File Bill of Exceptions and Extending Term dated July 18, 1933,
8. Findings of Fact and Conclusions of Law
9. Judgment
10. Order Extending Time Within Which to Serve and File Bill of Exceptions and Extending Term dated October 7, 1933
11. Order Extending Time Within Which to Serve and File Bill of Exceptions and Extending Term dated January 8, 1934
12. Order Extending Time Within Which to Serve and File Bill of Exceptions dated February 6, 1934
13. Order Extending Time in Which to Docket Cause dated February 6, 1934
14. Bill of Exceptions
15. Plaintiff's Exhibit #'s 1 to 22 inclusive
15. Defendant's Exhibit 'A'.
16. Appeal papers, consisting of:
 - A. Petition for Appeal
 - B. Order Allowing Appeal

- C. Assignment of Errors
- D. Praecipe for Transcript of Record
- E. Citation on Appeal
- F. Clerk's Certificate to record

Said Transcript to be prepared as required by law and the rules of this Court and the rules of the United States Circuit Court of Appeals for the Ninth Circuit, and to be filed in the office of the Clerk of the United States Circuit Court of Appeals for the Ninth Circuit at San Francisco, on or before the day of , 1934

DATED:

Peirson M Hall

PEIRSON M. HALL

United States Attorney

Hugh L Dickson

HUGH L. DICKSON

Assistant United States Attorney

Madison L Hill

MADISON L. HILL

Attorney, Department of Justice

Attorneys for Defendant

[Endorsed]: No. 4247-M In the District Court of the United States for the Central Division of the Southern District Walter Woodall Plaintiff vs. United States of America Defendant PRAECIPE FOR TRANSCRIPT OF RECORD Received Copy of within Praecipe this 20th day of March, 1934 Volney P Mooney, Jr. attorney for plttf. Filed Mar 30 1934 R. S. Zimmerman, Clerk By Edmund L Smith Deputy Clerk.

IN THE DISTRICT COURT OF THE UNITED
STATES, IN AND FOR THE SOUTHERN
DISTRICT OF CALIFORNIA,
CENTRAL DIVISION.

WALTER WOODALL,)
)
Plaintiff,)
)
vs.)
)
UNITED STATES OF AMERICA,)
)
Defendant.)

CLERK'S CERTIFICATE.

I, R. S. Zimmerman, clerk of the United States District Court for the Southern District of California, do hereby certify the foregoing volume containing 108 pages, numbered from 1 to 108 inclusive, to be the Transcript of Record on Appeal in the above entitled cause, as printed by the appellant, and presented to me for comparison and certification, and that the same has been compared and corrected by me and contains a full, true and correct copy of the citation; complaint; answer; stipulation waiving jury; minutes of the trial of May 31, 1933; minute order of June 30, 1933; memorandum opinion; findings of fact and conclusions of law; judgment; bill of exceptions; orders extending time and term to file bill of exceptions;

petition for appeal; assignment of errors; order allowing appeal; a copy of the order allowing original exhibits to be forwarded to the Circuit Court of Appeals in lieu of incorporating the same in the record as called for in the praecipe, and praecipe.

I DO FURTHER CERTIFY that the amount paid for printing the foregoing record on appeal is \$ and that said amount has been paid the printer by the appellant herein and a receipted bill is herewith enclosed, also that the fees of the Clerk for comparing, correcting and certifying the foregoing Record on Appeal amount to..... and that said amount has been paid me by the appellant herein.

IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed the Seal of the District Court of the United States of America, in and for the Southern District of California, Central Division, this..... day of May, in the year of Our Lord One Thousand Nine Hundred and Thirty-four and of our Independence the One Hundred and Fifty-eighth.

R. S. ZIMMERMAN,

Clerk of the District Court of the
United States of America, in
and for the Southern District
of California.

By

Deputy.